

38

EMPLOYERS' LIABILITY AND WORK- MEN'S COMPENSATION

Serial No. 4

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

SIXTY-SECOND CONGRESS

SECOND SESSION

ON

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HOUSE OF REPRESENTATIVES.

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EMPLOYERS' LIABILITY AND WORKMEN'S COMPENSATION.

SERIAL No. 4.

COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, *Thursday, June 6, 1912.*

The committee met at 10.45 o'clock a. m., Hon. Henry D. Clayton (chairman) presiding.

The CHAIRMAN. This was the time fixed for the further consideration of the Sutherland-Brantley bill, as it is commonly called, otherwise known as the employees' compensation act. I believe Mr. Brantley had the floor when the committee recessed, or there was at least some sort of an agreement that he should have something to say to the committee this morning. Before Mr. Brantley begins I may say that it is expected the committee will have a quorum present to-day. There is not quite a quorum present at this time, but I deem it best that we proceed with the hearing, because the proceedings will be printed anyway. Then I want to say to the committee that at 11 o'clock I shall have to ask the committee to excuse me that I may attend the session of the House. A very important matter is coming up there, so I am advised, a matter of which this committee has jurisdiction, and I deem it important, therefore, that the chairman of the committee be over there.

Mr. Brantley may continue his remarks.

Mr. BRANTLEY. Mr. Chairman, if I may be permitted to do so, I would like to yield first for a few moments to a committee that is down here from the factory inspectors' convention, who have a resolution for this committee that they have come from their convention to present.

The CHAIRMAN. The committee will be very glad to hear the representatives of that organization.

**STATEMENT OF MR. EDWARD A. BATES, OF UTICA, N. Y.,
SUPERVISING FACTORY INSPECTOR, DEPARTMENT OF LABOR,
STATE OF NEW YORK.**

Mr. BATES. With my colleagues on the committee, I am representing here the International Association of Factory Inspectors, now in convention in this city.

The CHAIRMAN. Please give the names of your associates or colleagues representing that association, so that the proceedings may show all about you. Of course, the chairman and members of the committee who have met you and your associates know who you are and whom you represent, but you desire, I suppose, that it go in the record who you are, so please give all the information along that line to the reporter.

STATEMENT OF MR. W. W. WILLIAMS, STATE DEPUTY INSPECTOR OF MISSOURI.

Mr. WILLIAMS. Mr. Chairman, we are in session at the Shoreham, in our twenty-sixth annual convention, and a resolution was passed there yesterday indorsing this bill we speak of, and on this committee are Mr. A. L. Van Ness, deputy State inspector, Bloomington, Ill.; Mr. Charles L. Daugherty, commissioner of labor, State of Oklahoma; Mr. C. E. Connally, Oklahoma City, Okla., deputy State factory inspector, department of labor; Mr. J. W. Smith, of Michigan, deputy commissioner of labor for Michigan; and myself, W. W. Williams, chief inspector, factory inspection department of Missouri. I will state further that the members of this committee are all members of organized labor, representing machinists, printers, pipe fitters, steam fitters, and miners. It was the sense of our meeting yesterday, unanimously, to indorse this bill for your favorable consideration.

Mr. Floyd took the chair in the absence of the chairman.

Mr. FLOYD. Do any of the men you speak of represent railroads or are they interested in railroads?

Mr. WILLIAMS. I am at present, of course, representing the State of Missouri, appointed by the governor of my State; but 25 years of my life were spent in railroad service.

Mr. FLOYD. But at present you are not in railroad service?

Mr. WILLIAMS. No, sir; I am not.

Mr. FLOYD. Does this organization have any connection, directly with the railroads?

Mr. WILLIAMS. In this respect: We are the representatives of the various factory inspection departments throughout the United States and you are all familiar with our duties, primarily the prevention of accidents, factory inspection in all lines; we work with railroad companies and, in fact, in every place where machinery may be used.

Mr. FLOYD. The point I wanted to get your opinion about is—most of the compensation acts of foreign countries I have examined embrace not only railroads, but every other conceivable occupation.

Mr. WILLIAMS. Yes, sir.

Mr. FLOYD. Now, to know whether you gentlemen who come here and favor the passage of this act would favor an amendment to include all dangerous occupations in this bill is what I want.

Mr. WILLIAMS. That matter was not discussed. But for myself, and, I believe, for the committee, I would state we are heartily in favor of an amendment to the bill that would embrace all dangerous or hazardous occupations.

Mr. FLOYD. You understand this bill is confined exclusively to railroads?

Mr. WILLIAMS. Yes, sir.

Mr. FLOYD. That is all.

Mr. MOON. One question. You are not a manufacturing association at all, are you?

Mr. WILLIAMS. Oh, no, sir.

Mr. MOON. I understood the acting chairman to speak of you as a manufacturing association.

Mr. WILLIAMS. No; we are representing factory inspectors.

Mr. MOON. How many delegates are here attending this convention?

Mr. WILLIAMS. I would judge there are about 60 or 70.

Mr. MOON. Representing how many States?

Mr. WILLIAMS. I could not give you that exactly. We have about 20 States composing this organization. You understand that not all of the States have factory inspection laws.

Mr. MOON. Are all the States that do have factory inspection laws represented here?

Mr. WILLIAMS. No, sir, not at all; but we have reports from all the States; from those who could not attend.

Mr. BATES. Mr. Chairman, I desire to file this resolution.

Mr. MOON. Can you give us any idea as to the extent organized labor is represented in the personnel of this organization here?

Mr. BATES. About 90 per cent of factory inspectors.

Mr. CARLIN. You say 90 per cent of factory inspectors?

Mr. BATES. I will not say 90 per cent of them are representatives of organized labor, but I will say that 90 per cent of them are wage earners, and a great number of them have shown their interest in the various crafts by becoming members of unions in order to show their interest in the advancement of that particular craft.

Mr. HOUSTON. I understood the question to be what per cent of organized labor was represented by your body. Was that the question, Judge Moon?

Mr. MOON. Yes. But his answer is responsive to the thought in my mind, when he says that 90 per cent of them are wage earners. You did say 90 per cent of them were members of organized labor.

Mr. BATES. I meant they were wage earners when I said that. I do not know what percentage of the members are members of organized labor. Some, after they got their appointment, felt it incumbent upon them to retire from organized labor.

Mr. MOON. I think the resolution might as well be read by the gentleman.

Mr. FLOYD. Proceed to read the resolution.

Mr. Bates read the resolution referred to, as follows:

HEADQUARTERS INTERNATIONAL ASSOCIATION OF FACTORY INSPECTORS,
Washington, D. C., June 5, 1912.

Resolved, That the International Association of Factory Inspectors, in convention assembled, approve and indorse the Federal workingmen's compensation act intro-

duced in the Senate by Senator Sutherland and in the House of Representatives by Mr. Brantley, and respectfully petition the House Committee on the Judiciary for their favorable report on said bill.

JOHN S. WHALEN,
Chairman of the Committee on Resolutions.

W. W. WILLIAMS,
Secretary-Treasurer International Association of Factory Inspectors.

Mr. FLOYD. Have you gentlemen anything further to add?

Mr. BATES. Mr. Chairman, we did not come here for the purpose of arguing the merits of the bill. That, we believe, is to be in possibly more able hands than ours, and will be presented to you, as we understand it, by representatives directly of organized labor.

Mr. GRAHAM. In this matter do you come here with any authority to speak specifically for organized labor with reference to this bill?

Mr. BATES. No; we come here merely as the mouthpiece of the International Factory Inspectors' Association.

Mr. GRAHAM. And it is the personal judgment of the gentlemen assembled there together that this would be a good bill to enact?

Mr. BATES. Yes. The idea of the factory inspection is the conservation of life and the prevention of accidents, particularly, and we believe this is in line with that idea, and it is in the line of progress; and we further believe that your action here would tend to place upon the statute books of the various States something along that line. We have merely, in our action in convention assembled, indorsed the idea of workmen's compensation.

Mr. FLOYD. Then you mean that you indorsed the idea. Did you consider in detail this particular bill, so that you can indorse this particular bill?

Mr. BATES. It is along the lines of compensation, yes; and we believe we can indorse this bill as affecting railroad interests. The factory inspectors have little to do with the inspection of railroads; but, as I say, we did not come here to argue the merits of the bill. Those who are far better acquainted are here to do that, on both sides. We thank you.

Mr. FLOYD. Mr. Brantley will be heard by the committee.

Mr. BRANTLEY. Mr. Gompers has just come in and would like to make a statement to the committee. If I may be permitted to do so, I would like to let him make his statement.

Mr. HARDWICK. Do I understand we are hearing not only arguments from Members of Congress interested in this bill, but that it is a general hearing?

Mr. FLOYD. That is in the control of the committee.

Mr. HARDWICK. I want it understood on both sides, because there are some men here, representatives of organized labor, who are against it.

Mr. BRANTLEY. We gave the last hearing to that side.

Mr. FLOYD. The resolution was to continue the meeting for to-day to permit Judge Brantley and others who may desire to be heard against the bill, including certain Members of Congress, who had requested that permission. The procedure is always in the control of the committee. Unless there is objection at the suggestion of Mr. Brantley Mr. Gompers will be given an opportunity to be heard at this time.

Mr. CARLIN. Mr. Chairman, if Mr. Hardwick would like to be heard——

Mr. HARDWICK. Not ahead of Mr. Gompers. There are certain gentlemen here from my State who would like to be heard in reference to this matter who are not Members of Congress.

Mr. FLOYD. The resolution provided for the hearing of Mr. Brantley and others who might appear here in opposition to the bill to-day.

Mr. CARLIN. What I am trying to do is to accommodate Mr. Hardwick. Does he want to be heard to-day?

Mr. HARDWICK. Not now.

Mr. FLOYD. We will hear Mr. Gompers, then.

STATEMENT OF MR. SAMUEL GOMPERS, PRESIDENT OF THE AMERICAN FEDERATION OF LABOR.

Mr. GOMPERS. Mr. Chairman and gentlemen of the committee, I have had, and have, some little knowledge of the provisions of the bill passed by the Senate and now under consideration by your honorable committee. I think I am justified in saying that I have been somewhat helpful to the Federal commission which drafted the bill, and also to some of the Senators with whom I have had the honor to confer upon the several features of the workmen's compensation bill. Of course, there is a difference of opinion among some as to the wisdom and the practicability of workmen's compensation taking the place of employers' liability. To men who have given the subject serious consideration no argument is really necessary, and it would be a waste of time to advance the arguments in favor of workmen's compensation to take the place of employers' liability. Economy, justice, a fair consideration for the workmen—particularly the workmen—and also of the employing companies all warrant that the workmen's compensation shall take the place of the old, and what I regard should be the effete, employers' liability acts. I do not know that it is necessary, after your perhaps very long study of the question of the employers' liability laws, with all the defenses, and with the modification of these defenses, and, on the other hand, compensation, to take up your time advocating compensation instead of employers' liability. I know that the arguments in their entirety are at the command of the members of the Judiciary Committee, and I shall not take your time to present them here now.

There are only two features, that are seldom dwelt upon, which I desire to just mention, rather than argue for them. One is that under employers' liability, during the time when the injured workman, or the family of the workman killed, needs money most, that is the time when they do not have the use of it, and can not have it. It is subject to litigation, how long and how ending no one can know in advance, and during the most critical time of the real needs of the injured workman, or the family of the workingman killed, that is the time when they have not anything. On the other hand, of course, under compensation practically automatic, the time when the real needs are there in the family, that is the time when there is the regular inflow of compensation.

There is this other feature, of course. It does not apply with the man who is killed by an injury or an accident, but a man who may be

severely hurt, and who under employers' liability must sue in order to recover—that is, unless some private arrangement may be made, and if a private arrangement is made between the employing company and the employee, you can readily understand that the immediate needs of the injured workman are a large consideration in determining as to what the amount of damages should be. The dire necessities of the injured man and his family compel him to come to an agreement as to an amount where probably a jury would award ten times over. But a workman is injured under the old system of employers' liability, and if he must sue in order to recover, whether he has recovered or not, whether a jury shall award him damages or not, the fact is that the only people from whom, in his maimed condition, he could hope to get some sort of employment, perhaps, of another character than that in which he was employed before his accident, he has antagonized by a suit at law, and to that extent has aroused feeling, whereas otherwise the company employer would, under a fairer condition, under compensation, if you please, find some employment for the injured workman. In the case of the employers' liability, he has made an enemy of the employer, and consequently he has no inclination to give him a chance to earn a dollar.

As I say to you, I do not want to argue in favor of workmen's compensation to succeed and supplement employers' liability. I only want to say, in regard to the bill under consideration, I concur in the view expressed by some, that this bill is not ideal or entirely satisfactory. I mean to say that it does not go as far as I think it should go, as far as the demands of justice should go, so far as the needs of the injured workman should go, so far as the needs of the family of the workman killed in industry should go. But legislation of this character must necessarily be slow, must necessarily be carefully guided, must not go so far that it will arouse a repugnance and a revolt and a protest against it. I belong to a number of organizations which, in their turn, have provided for the payment of certain benefits, such, for instance, as the out-of-work benefit, benefit in case of illness, endowment to the widow or orphans, strike benefits, lock-out benefits, and so forth. In the beginning, in helping to frame the laws of the organization for the payment of these benefits, I have always endeavored to make the benefits comparatively low—in order that we might be sure that we are not going to promise more than we could fulfill, or, in fulfilling it, taxing our members to such a degree that they themselves would revolt against it and overthrow the system. I mention this fact because I realize the importance of a piece of legislation such as that which is under consideration by your committee. You are proposing a new scheme. The bill went through the consideration at the hands of the commission, the hearings were extensive, suggestions were invited, and I think I am right in saying there were not less than four tentative drafts of bills, each of them a change upon the other, an extension here, a little modification there, some new lines, and while I said at the outset of this feature of my remarks that I am in accord with those who think that the bill is not ideal, that it does not go far enough—I mean so far as to satisfy the needs of justice—I am free to say that, in my judgment, it is the best that can be done by the Congress of the United States in the year 1912.

The bill goes further by far than any other compensation act in any country on the face of the globe, and it goes further than any compensation act in any State of the Union. I think that the Judiciary Committee should report this bill with a favorable recommendation to the House that it should pass. It is one of those constructive pieces of legislation that go far to help in the development of these industrial problems by which the people of our country are confronted and surrounded. It will be a splendid piece of industrial statesmanship. As a Member of the House of Representatives said yesterday in the convention of the National Association of Factory Inspectors, "We are heading for the right road," and I believe that this bill enacted into law would help us still further in heading for the right road.

Mr. STERLING. Are you familiar with the amendments that the Senate put in this bill?

Mr. GOMPERS. I am not sure to which you refer.

Mr. STERLING. I am not familiar with them. The question with me was whether this committee should substitute the Senate bill for consideration, or proceed with the House bill; and that depends largely on the character of the amendments that the Senate made to the bill. I thought maybe you were familiar with them.

Mr. GOMPERS. I am familiar with some of them.

Mr. BRANTLEY. Mr. Chairman, if I may be permitted, I want to say that, as the one who introduced the House bill, and as one of the commission, it is my purpose to ask this committee to report the bill by substitute, reporting the bill as it passed the Senate in lieu of the original House bill.

Mr. NORRIS. That would give it a parliamentary advantage that it would not possess if we passed the House bill; in other words, if we passed the Senate bill, however we might amend it, it would be in order, when it got back to the Senate, as I understand the rules, to move to concur. If we passed the House bill, then when it got to the Senate it would be referred to the committee, and we would not be much further along than we are now.

Mr. BRANTLEY. Regardless of the parliamentary situation that might arise—and I think Judge Norris is correct about it—my purpose in substituting, or moving to substitute, the Senate bill is because of the Senate amendments, which personally I approve.

Mr. NORRIS. It would expedite the enactment of the bill into law if we took that course.

Mr. BRANTLEY. I suppose it would.

Mr. NORRIS. I would like to ask you, Mr. Gompers, the question I thought of awhile ago when you were saying the bill was not entirely satisfactory. I presume you mean that in some instances, under this bill, men—like an engineer, for instance—would not get enough compensation. A man would not get compensation that would be in entire accord with the salary he is drawing.

Mr. GOMPERS. I had reference to the schedules.

Mr. NORRIS. That is what I have reference to; and I agree with you there, that it would seem that the schedule he should get, if he were guilty of no negligence, would not be quite as high as he ought to get; on the other hand, however, there is another class of employees which, under the present law, would not get anything,

that it compensates liberally. I was wondering if it would be possible to adopt a schedule that would differentiate between those two classes of employees and give to the one a little more and pay the other class a little less.

Mr. GOMPERS. I imagine that will work itself out in time. At present it is better that everyone injured in the industry should be compensated than that only a few obtain large judgments, and the men who are guilty of contributory negligence, as the term goes, should receive nothing.

Mr. NORRIS. I agree with that.

Mr. GOMPERS. It is the humanitarian view.

Mr. NORRIS. The only criticism, it seems to me, is that they are both paid the same schedule.

Mr. MOON. Mr. Norris, one of the chief objects of it was to eliminate all consideration of questions of negligence, but you are putting it right back where it was.

Mr. NORRIS. That is a great thing. The establishment of the principle, I think, is more important than the schedule.

Mr. GOMPERS. And for that reason I say I am in thorough accord with the principle, and I believe, in the initial step, the schedules are not niggardly.

Mr. CARLIN. You are regarded as the very head and front of organized labor in this country, and I would like to have your opinion—and I am sure the committee would—as to just what percentage of labor favors the passing of this bill. I am calling your attention, in asking that question, to the fact that there are other labor organizations represented here to-day that are here in opposition to the bill.

Mr. GOMPERS. May I inquire, sir, who they are, and what organizations they represent?

Mr. CARLIN. The firemen's organization, railroad firemen, represented through Mr. Apperson and Mr. Teat, are here in opposition to the bill.

Mr. GOMPERS. I am very sorry if I should be placed in the position of appearing for any measure in regard to which the representatives of any organizations of labor appear who are at variance with me. I will say that the American Federation of Labor for several years has been engaged, and its officers have been engaged, in the study of this question of workmen's compensation, and we have drafted a bill, and a model bill, a bill that we had printed and sent broadcast throughout the country for introduction in the legislatures of the State, and a Federal bill. That bill has had the consideration of the Federal commission. I noticed, too, that the Brotherhood of Locomotive Engineers, at its recent convention, adopted by a practically unanimous vote a resolution indorsing this bill.

Mr. HARDWICK. Not that; a compensation law, according to their printed minutes—not this bill.

Mr. BRANTLEY. They specifically indorsed Mr. Wills for his efforts to pass this bill.

Mr. HARDWICK. I have the minutes here. I do not so read them.

Mr. GOMPERS. I had a copy of the resolution in which a statement is quoted as having been made by a Member of Congress, based upon the statement sent to him by some one, and the resolution of the convention indorsed the action of Mr. Wills in advocating the passage of the Federal commission bill.

Mr. MOON. You speak now about the American Federation having prepared a model bill?

Mr. GOMPERS. Yes, sir.

Mr. MOON. Let me ask you if it is not true that the provisions for the workingmen in this bill are more liberal than those in the bill offered by the American Federation of Labor?

Mr. GOMPERS. Yes, sir. On entering this room this morning a gentleman came to me and said that Mr. Wills was detained—where, he did not mention—and that he wanted me to know this fact, that he was coming here later, and Mr. Wills can talk for himself and his own organization. I am merely speaking from what I saw and my memory of what I read.

Mr. HARDWICK. Would you mind consulting the minutes of the meeting and seeing exactly what they show? [Handing witness paper.] I think that is right. One of the gentlemen who is a member of the organization gave that to me and said they were their official minutes.

Mr. GOMPERS. I have not the slightest doubt but what this is true. These proceedings, which I have of the second day, of the Tenth Biennial Convention of the Brotherhood of Locomotive Engineers, would not be fully comprehensible if that which I find marked in pencil were not read in connection with the general discussion which was held by the convention for several hours.

Mr. HARDWICK. Is not that in there, too?

Mr. GOMPERS. Yes; it is in there. But, I say, this marked part would not convey an intelligent understanding of the proceedings.

Mr. HARDWICK. The fact is that the convention passed a resolution indorsing a compensation bill, is it not?

Mr. GOMPERS. And it also declared for the indorsement of the actions of Mr. Wills, as the representative of the Brotherhood of Locomotive Engineers, of the Order of Railway Conductors, and of, I think, the Order of Railroad Trainmen.

Mr. HARDWICK. In connection with this legislation?

Mr. GOMPERS. Mr. Wills informed me that he had received instructions from Mr. Garretson, the executive officer of the Order of Railway Conductors, to favor this bill. I agree with the motion passed by that convention, on page 19 of those printed proceedings; that is, that, "In our opinion the compensation for engineers is too low." I have already said that.

Mr. HARDWICK. Would you mind reading into the record the resolution that they did pass?

Mr. MOON. Before doing that, let me ask a question, Mr. Gompers.

Mr. HARDWICK. Let him read that first, please.

Mr. MOON. I prefer to ask the question.

Mr. HARDWICK. Mr. Chairman, I would like for him to answer the question.

Mr. MOON. Is it not true that four or five days after this there was a resolution adopted indorsing this bill?

Mr. HARDWICK. I would like for him to read what they did adopt.

Mr. MOON. I am asking him if they did not adopt, four or five days later, a straight resolution indorsing this bill.

Mr. HARDWICK. Can he not answer my question?

Mr. GOMPERS. I shall answer both questions at the same time if I may be permitted.

Mr. FLOYD. You may proceed, Mr. Gompers.

Mr. GOMPERS. The convention did pass that motion to advise Congress that, in the opinion of the engineers, the compensation for engineers was too low, and it is true that a few days after a resolution was adopted by the convention reciting some of the opposition to this bill, and the resolution finally approved the course pursued by Mr. Wills in representing that organization, which was supporting this bill now under consideration by the committee.

Mr. HARDWICK. Have you got a copy of that resolution in the minutes anywhere?

Mr. GOMPERS. I have not got it with me.

Mr. HARDWICK. That resolution, if you will pardon me, if I am correctly informed about it, simply indorses generally Mr. Wills, and says nothing whatever in reference to this legislation.

Mr. CARLIN. Have you a copy of the resolution, Mr. Hardwick?

Mr. HARDWICK. No. I have seen something that purported to be a copy; I do not know whether it is or not. I am speaking from memory, but I want to see whether I am right. The only resolution I have ever seen that they passed on the specific question of this legislation was the resolution before you, which I want you to read into the record, in which they say they indorse a compensation law.

Mr. GOMPERS. That was the second day's proceedings.

Mr. HARDWICK. I know; whether it was the second, the tenth, or the first.

Mr. GOMPERS. The convention lasted either 22 or 23 days.

Mr. HARDWICK. Did they pass any other resolution referring to this specific legislation?

Mr. GOMPERS. They did.

Mr. HARDWICK. What resolution?

Mr. GOMPERS. If you give me time I shall present it before I am excused by the committee, or else I will furnish it during the course of the day.

Mr. HARDWICK. I am simply asking for information.

Mr. MOON. There is a gentleman here who was present at the convention who can tell you all about it; one of the delegates to the convention.

Mr. HARDWICK. All right. There are some men here who stated otherwise to me.

Mr. GOMPERS. May I ask this gentleman some questions [referring to Mr. T. J. Hoskins]?

Mr. FLOYD. Certainly.

STATEMENT OF MR. T. J. HOSKINS.

Mr. GOMPERS. Are you a member of the Brotherhood of Locomotive Engineers?

Mr. HOSKINS. Yes, sir.

Mr. GOMPERS. Were you a delegate to the recent convention of that organization held at Harrisburg?

Mr. HOSKINS. I was.

Mr. GOMPERS. You have heard the questions and answers just made in regard to a resolution having been considered by the convention upon the subject of workmen's compensation?

Mr. HOSKINS. Yes, sir.

Mr. GOMPERS. Let me read to you a motion appearing in the proceedings of the second day of that convention, page 19:

Div. 541. I move that this convention go on record as favoring a compensation act, and that they notify Congress that in our opinion the compensation for engineers is too low.

Div. 161. I second the motion.

Do you remember that resolution having been adopted?

Mr. HOSKINS. The convention acted upon the question of employers' liability and workmen's compensation, and, after lengthy discussion, passed an overwhelming vote indorsing the compensation; and then, after that, a second motion was passed that we thought the compensation for engineers was too low, and when the minutes were finally compiled and reported the two actions are reported in one.

Mr. GOMPERS. Do you remember that there was any resolution passed subsequently in regard to the action of Mr. Wills, the legislative agent of your brotherhood?

Mr. HOSKINS. Yes, sir. There was an action later passed, I do not remember when, five or six days later. We passed a resolution indorsing two or three other measures in connection with it.

Mr. GOMPERS. Will you look at this document I hand you [handing witness paper]?

Mr. HOSKINS. We passed this right here at the bottom.

Mr. GOMPERS. Do you recognize this as a series of preambles and resolution adopted by the Brotherhood of Locomotive Engineers at its convention?

Mr. HOSKINS. The resolution at the bottom was adopted by us, and the matter above was recital before this convention as reason for calling upon us to take action, and we did so with the resolution passed at the bottom.

Mr. CARLIN. Will you read that, Mr. Gompers? Or is that the one you have read from the minutes?

Mr. GOMPERS. That is one I would like to read in the minutes, as identified by Mr. Hoskins, and to which I referred.

Mr. FLOYD. I suggest you read the entire paper. It has been identified.

Mr. GOMPERS. The matter which I shall read now is reciting the basis upon which the resolution is offered.

Mr. Gompers read the paper referred to, as follows:

Resolution adopted May 17, 1912, at Harrisburg, Pa., by Brotherhood of Locomotive Engineers, over 800 delegates being present. Adoption of resolution followed many days' discussion of Senate workmen's compensation bill, which has passed Senate; Dillingham immigration bill (S. 3175), which has passed Senate; and anti-injunction bill, which has passed House.

Whereas, as there are now pending in Congress the following bills in the interest of labor, the passage of which our joint national legislative representative is expected to and is aiding in securing—the anti-injunction bill, in which every member of the Brotherhood of Locomotive Engineers is surely interested, which has passed the House and is now pending in the Senate; an immigration restriction bill, favored by the various labor and civic organizations throughout the country, and which surely ought to be by this convention, that has passed the Senate and is now pending in the House; and the workmen's compensation bill, that has passed the Senate and is now pending in the House; and

Whereas there has appeared in the Congressional Record statements made by a member of this order, from which we quote the following paragraph: "Believing that the individual members should get behind those officers (grand officers) and give them their undivided support and loyalty and show our friends in the Senate, viz, Senator Reed, Senator Ashurst, Senator Jeff Davis, Senator Overman, and a few others

whom he terms the force opposing them, that we are behind them. In other words, that we are a lot of cattle, following the Judases to the slaughtering pens. He says, 'What would you think of a local chairman who was adjusting a grievance for his division, and a member should give the facts and try to influence others against that chairman?' I ask him, 'What would you think of a chairman who was working in with the railway company to reduce your wages from 300 to 800 per cent?' That is what Wills and his grand officer are doing—working hand in hand with the railway companies to reduce your compensation from 300 to 800 per cent. He says, 'It looks to me to be on the same principle as that of a soldier shooting an officer in the back who was bravely leading them in a charge or attack upon the enemy.' What brave general does he mean? Those of the militia or those of the regulars that led their soldiers against the union miners of Colorado, the striking railway men in 1904, or those brave generals that led their soldiers against the women and children in Lawrence, Mass., this last year? Does he style Wills and the other grand executive with those brave generals? If he does, I do not question him."

Whereas such matter as quoted, left unchallenged, interferes with our prestige as an organization and with our national legislative representative in the work to which he has been assigned; Therefore be it

Resolved, That this convention unqualifiedly indorse the action of our joint national legislative representative, Brother H. E. Wills, in his efforts to secure the enactment of the anti-injunction bill, the restriction of immigration bill, and the workmen's compensation bill.

Mr. GOMPERS. I want to divert the discussion for a few moments to the matter which is quoted in one of the preambles as having appeared in the Congressional Record. Some member of the Brotherhood of Locomotive Engineers evidently, from the whole make-up of that which is quoted, is somewhat bereft of even some slight balance weight, and I think that is a very charitable view to take of it. Yet it is regarded as of sufficient importance to quote that and put it in the Record as against the great organization of the Brotherhood of Locomotive Engineers.

Mr. HARDWICK. One other question. Mr. Gompers, I just wanted to ask you if you were aware of the fact that before this last vote was taken, according to the printed minutes of the third day's sessions of that convention, Mr. Wills made the statement that I will now read to you:

Brother H. E. WILLS, assistant C. G. E. I would like to answer the question and say that the particular clause that you spoke of when I entered the question, and I answered it advisedly. I know that there was some change in the wording of that feature by my suggestion, so that it puts it absolutely in the hands of the employee whether he accepts it or not.

Mr. GOMPERS. Mr. Wills may have made that statement, and I have no doubt he did, and I suppose that neither he nor any of the advocates of the bill has ever said that the bill is perfect.

Mr. HARDWICK. No; but the proposition was that it should not destroy existing rights under the liability law, but it should be optional with the employee whether he would take advantage of it or not.

Mr. GOMPERS. I believe we have to make our choice; either we are going to have compensation, with all the defenses that have been put up in the past hundred years, somewhat modified, if you please, but still involving litigation, or we are going to have compensation automatic in character, in which we shall arrive at the truth of the cause of action, so that we may bend our joint thought and actions to prevent the accidents that now occur so frequently and for which neither employer nor employee is responsible.

Mr. THOMAS. Mr. Gompers, does not the English compensation law make it optional with the employee?

Mr. GOMPERS. It does, in many respects.

Mr. THOMAS. Would you not like this better if it were made optional?

Mr. GOMPERS. I would prefer the general compensation; that is the system which should be employed in our country. We have lagged behind so long I think it behooves us to make a good long jump, so that we get somewhere near up to the front ranks.

Mr. THOMAS. I know; would this not be more satisfactory if it were made optional with the employee?

Mr. GOMPERS. I would prefer that the judgment of the committee should prevail as regards that.

Mr. THOMAS. I am just asking you your opinion of it.

Mr. GOMPERS. Of course, there are cases of real criminal negligence on the part of the employer in which it would seem the element of justice that he ought to be mulcted in large damages, that is true. But there is this other feature, that which is sometimes said to be willful negligence on the part of the workman, and I suppose under certain circumstances he would not be entitled to any recovery or damages under employers' liability, whereas, unless it were so plainly and purposely designed, under compensation he would get something. So that I regard it as an offset.

Mr. CARLIN. Now, Mr. Gompers, what percentage of labor desires the passage of this bill as against those who do not?

Mr. GOMPERS. I know that the American Federation of Labor, the membership of affiliated organizations of which is fully 1,900,000, favors it; and I think there could be no further question as to the position upon this bill of the Brotherhood of Locomotive Engineers.

Mr. HIGGINS. Are they not affiliated with the American Federation?

Mr. GOMPERS. The Brotherhood of Locomotive Engineers is not, nor is the Brotherhood of Locomotive Firemen and Enginemen.

Mr. GRAHAM. At this stage you might read this into the record, if you wish [handing Mr. Gompers paper].

Mr. GOMPERS. The Bricklayers and Masons' International Union is not affiliated. The order of Railway Trainmen is not affiliated with the American Federation of Labor. Practically every other labor organization is.

Mr. HARDWICK. Is the Order of Railway Conductors?

Mr. GOMPERS. It is not.

Mr. MOON. Mr. Gompers, is it not true that about 66 per cent of the railroad employees are in the American Federation of Labor?

Mr. GOMPERS. They are, sir; between 60 and 66 per cent, including the telegraphers, employees in the machine shops, the switchmen, and numerous others I can not just recall in the railroad service.

Mr. CARLIN. You then represent, in your official capacity, 66 per cent of the men who would be affected by this bill?

Mr. GOMPERS. The American Federation of Labor would; yes, sir; but, in addition to that, I say that the Brotherhood of Locomotive Engineers has gone on record as favorable to it, and I am depending upon my memory, not anything else, that Mr. Wills informed me that he had advices from Mr. Garretson, the executive officer of the Order of Railroad Conductors, to favor this compensation bill.

Mr. HARDWICK. They have changed since the bill passed the Senate, however.

Mr. HOUSTON. Mr. Gompers, have you not heard of a number of these orders you mentioned who have been since that time opposing the passage of the bill?

Mr. GOMPERS. Not in convention assembled; I know of not one.

Mr. HOUSTON. Have you heard of any protests of any kind from them?

Mr. GOMPERS. Not directed to me. I have heard that here and there some protests have been entered. Let me say this, for I think I owe it to the Brotherhood of Locomotive Firemen and Enginemen, as well as the American Federation of Labor and myself, that I think that the relations between the organizations of firemen and enginemen and the American Federation of Labor have been nearer and closer than the relations of the Brotherhood of Locomotive Engineers and the American Federation of Labor; but I am strongly of opinion that in this instance it is a mistaken view which the firemen are taking upon this proposition. I do not know; it may be that a convention has been held and I not know it. There are lots of things going on in this world that I do not know which I would like to know. [To Mr. Teat.] Has there been a convention of the Order of Locomotive Firemen and Enginemen held in this last three months?

Mr. TEAT. No, sir; two years this month.

Mr. GOMPERS. So that, as a matter of fact, I think what I say is absolutely accurate.

Mr. STERLING. There was a letter read before this committee last Saturday from Mr. Garretson to some one—I forget the gentleman's name to whom it was written—in which he said that, so far as heard from, the divisions of railway conductors had indorsed the bill at the ratio of 20 to 1. So I should think that would be a pretty good indorsement of that branch of railway trainmen.

Mr. GOMPERS. May I say this: I know a number of men in the Brotherhood of Locomotive Firemen and Enginemen; I know them, I know the officers, and, as I live, I could not conceive of their being other than high-minded, straightforward men. I do believe that if they are opposed to this measure they are opposed to it for a want of knowledge. The fact of the matter is that this bill strikes at a very lucrative practice of the ambulance chasers and the claim agents, and if this bill becomes a law, it will do to some of these lawyers—what shall I say? “You might as well take from me my life as the means whereby I live.”

Mr. MOON. You do not regard putting them out of business as a detriment to the labor organizations, do you?

Mr. GOMPERS. Not a detriment to society. I am not going to criticize them too harshly, either, for, as a matter of fact, often and often where the poor fellow who, under existing law and practice, could not and would not have brought suit in court, these lawyers have made it possible for him to do so upon a basis of the damages to be awarded later by a court and a jury. But while that is true, it is a balm to the wound. I would prefer, however, that the wound should not be made, and if we have it in our power to prevent that wound being made, we ought to do it. The reason I brought this matter up is this, that there are quite a number of attorneys whose

sole practice consists in this line of cases, and they have been exceedingly active in trying to arouse feelings against this bill, and against any sort of workmen's compensation.

Mr. HIGGINS. It is a very lucrative practice.

Mr. GOMPERS. It is, as suggested, a very lucrative practice. It occupies time to prepare the case, of course, and covers a long period of time. But each case in itself does not take very much time, and it brings in from 40 to 50, sometimes 60, per cent of the amounts which the defendants are mulcted by a jury and a court. That is the essence of the opposition to this bill.

Senator SUTHERLAND. May I interrupt you to say that I have letters in my possession from practically all of the clerks of the United States courts in the country giving the details as to the percentage that is charged by these various personal-injury lawyers, and your statement is borne out by those letters.

Mr. GOMPERS. The injured workman, or the family of the workman killed, gets, if anything at all, practically 25, 30, and sometimes 35 per cent, but seldom anything more.

Mr. GRAHAM. Is that statement made with knowledge, or is it an estimate?

Mr. GOMPERS. It is made from a study of such facts and figures as I have been able to obtain in this last five years.

Mr. GRAHAM. The Federal courts, so far as I know, have always adopted the rule that the court must be consulted as to the size of the contingent fee allowed. In such case I suppose it would have to be a reasonable fee. Is not that rule generally prevalent?

Mr. DUPRÉ. Where does that rule obtain?

Mr. GRAHAM. It obtains in my section, in Illinois.

Mr. CARLIN. The Federal courts have adopted the rule of saying what the size of the verdict should be.

Mr. BRANTLEY. Did Mr. Graham hear the statement of Senator Sutherland that he has letters from the clerks of the various Federal courts giving the facts as to the percentage that goes to the attorneys?

Mr. GRAHAM. Do they sustain the statement made by Mr. Gompers?

Mr. BRANTLEY. They do.

Mr. GRAHAM. He made the percentage statement after Senator Sutherland made his. I am astounded at the statement he makes—that is the reason I question it—that the real plaintiff in the case should get only 25 or 30 or 35 per cent of the amount recovered.

Mr. BRANTLEY. He said 40, 50, or 60 per cent.

Mr. GOMPERS. I made the statement that the attorneys usually get from 40 to 50 or 60 per cent, and Senator Sutherland then interposed and said that he had correspondence from clerks of a number of courts throughout the country sustaining those figures which I gave. I put it in the reverse way; that is, I spoke of the percentage which the personal-injury attorneys receive, and the Senator put it in the percentage of the amounts recovered finally and received finally by the injured workman.

Mr. GRAHAM. Forty per cent of the amount recovered at the end of all appeals that could be taken is not unconscionable, is it?

Mr. GOMPERS. I am not questioning it. Yes; I think it is. I think all your lawyers' fees are exorbitant.

Mr. GRAHAM. You think lawyers ought to be abolished?

Mr. GOMPERS. No, sir; I think they are a necessary evil. But whatever view you take of it, whether they are a great benefit to society or whether they are a necessary evil, I think all their fees and charges are exorbitant.

Mr. GRAHAM. I want to put myself on record in the record as not agreeing with you, with reference to the attorneys for plaintiffs who have personal-injury cases, in every instance. I have a great deal of knowledge of that sort—and I am not speaking in a personal way now—and I know that they have done the injured ones vastly more good than harm.

Mr. GOMPERS. I have so said.

Mr. GRAHAM. And in many cases they have recovered liberally for those who suffered, when perhaps they would not have been able to recover at all but for the assistance and the energy of the attorneys; and the attack, I think, should be made on the system rather than on the profession.

Mr. GOMPERS. Mr. Graham, I am afraid I did not make myself clear.

Mr. GRAHAM. I am afraid that you made yourself too clear.

Mr. GOMPERS. I am under the impression that you did not hear what I said, sir.

Mr. GRAHAM. I thought I did.

Mr. GOMPERS. I think if you had heard what I said, or if I had had the faculty of expressing myself so as to make myself understood, it would appear upon the record that I said that I am not making an attack, either specifically or generally, upon the personal-injury lawyers. I said that were it not for them, times out of number the poor man who is injured would not recover a cent. I did attack the system; not the personal-injury attorney.

Mr. HOUSTON. Mr. Gompers, may I ask you a question? When you speak about the percentage that the injured party gets, you are not referring at all to the part that a plaintiff gets when he makes a recovery from a defendant; are you?

Mr. GOMPERS. I do not know that I caught that question accurately, sir.

Mr. HOUSTON. I say, when you speak of the amount that the plaintiff gets and that goes to the injured party as being 30 or 35 per cent, you do not mean to say that when a person brings an action against a railroad, for instance, and makes a recovery he gets only 35 per cent of that recovery?

Mr. GOMPERS. I do, sir.

Mr. HOUSTON. Where does the other 65 per cent go?

Mr. GOMPERS. It goes to the division under the agreement made in advance by the personal-injury attorney, upon the percentage basis, as to the amount which may be recovered from the defendant company.

Mr. HOUSTON. That is to say, the claim agent and the lawyer get 65 per cent?

Mr. GOMPERS. I did not speak of the claim agent, sir. As I understand, the claim agent represents the defendant. I refer to the attorney for the plaintiff.

Mr. HOUSTON. I am at a loss to understand how it is that the plaintiff is at any expense whatever except his lawyer's fee, and perhaps

his own personal expenses in attending the trial, where he brings a suit and makes a recovery against the defendant.

Mr. GOMPERS. The lawyer's percentage usually varies from 40 to 50 per cent. It is contingent. Then there are the expenses of experts, doctors, witnesses, stenographers, etc.

Mr. GRAHAM. All those go with the judgment against the defendant.

Mr. HOUSTON. Those are expenses incidental to the trial; but the plaintiff is liable only for his incidental expenses in looking after his case and his lawyer's fees.

Mr. GOMPERS. Yes, sir.

Mr. HOUSTON. Then I am surprised to hear you say that 65 per cent of the recovery goes that way. That is unquestionably a bad system.

Mr. GOMPERS. That is the actual fact. I am very glad Senator Sutherland is here, for I want to repeat that he has said that he has letters from a number of clerks of courts throughout the country supporting the statement I have just made before this committee.

Mr. HOUSTON. I should like to know if it would not be much better to make a law providing that the lawyer should not get more than, say, 25 per cent of the recovery by way of fee. Something of that sort has been enacted by Congress in regard to pension matters.

Mr. GOMPERS. Yes; if we were going to perpetuate the employer's liability, then that might mitigate some of the evil. But that would not be compensation.

Mr. FLOYD. Mr. Gompers, will you explain to me in that connection how this bill, if it becomes a law, is going to avoid litigation? Either party has a right to appeal from the findings of the adjuster to the district court, from the district court to the circuit court of appeals, and from the circuit court of appeals to the United States Supreme court. How are you going to avoid litigation by this kind of a bill?

Mr. GOMPERS. The litigation, I am sure, will be brought to the minimum. I do not suppose it can be entirely eliminated, although I would prefer that it should be.

Mr. FLOYD. I think so, too—that the litigation would be brought to the minimum. But my objection to it is that the bill is so framed that the railroad employee will be compelled to submit to just what the railroad company sees fit to give him. That is my objection to it.

Mr. GOMPERS. What the railroad company sees fit to give him?

Mr. FLOYD. Yes; that the bill is so complicated, and the remedies against the railroad companies are so complicated, and the amounts of compensation are so low that no employee can afford to litigate. The result will be that they will be compelled to submit to what the railroad company will agree to give them or go through the procedure of a trial before an adjuster, a trial before the district court, a trial before the circuit court of appeals, and a trial before the Supreme court of the United States.

Senator SUTHERLAND. Mr. Floyd, do you know of the provision which has been put in the bill which penalizes the employer who takes an appeal from the adjuster and is not successful in maintaining it? We have a provision in the bill which penalizes in the sum of 25 per cent of the amount recovered the employer who takes an appeal beyond the adjuster unless the employer succeeds.

Mr. FLOYD. When did that get in the bill?

Senator SUTHERLAND. It was put in in the Senate.

Mr. FLOYD. I was not aware of that, Senator Sutherland, because no such provision is in the House bill.

Mr. MOON. Mr. Gompers, you have had a wide experience, and I know you have accurate observation. Is it not true that these bills in other countries have proved, as you stated, automatic in their operation—that in 90 per cent of the cases there is no litigation whatever?

Mr. GOMPERS. That is the fact, sir.

Mr. NORRIS. What is the exact amount, if you know, Mr. Gompers?

Mr. GOMPERS. In this bill?

Mr. NORRIS. No; I mean in foreign countries where they have had similar bills. What has been the percentage of cases where there has been actual litigation?

Mr. GOMPERS. Less than 10 per cent.

Mr. MOON. Considerably less, I think, Mr. Gompers.

Senator SUTHERLAND. The last report upon this subject published by the English commission, which I have, shows that practically 98 per cent of the personal-injury cases are settled without litigation. It also shows that of the death claims about 20 per cent go to court in one way or another; but the commission says that the majority of that 20 per cent go to court for the purpose of adjusting the compensation among the beneficiaries, and not in a contest with the employer.

Mr. GOMPERS. I will say that I have just been informed by a friend of mine, upon whom I often rely to give me exact figures, that there were just 63 cases litigated in Great Britain within the past two years.

Mr. CARLIN. Mr. Gompers, I want to see if I get your position accurately. You favor the broad principle of compensation as against a liability law?

Mr. GOMPERS. Yes, sir.

Mr. CARLIN. So far as the specific compensations in this bill are concerned, you do not think they are large enough?

Mr. GOMPERS. No, sir.

Mr. CARLIN. But you believe the future will take care of that?

Mr. GOMPERS. Yes, sir.

Mr. CARLIN. And for that reason you favor the passage of the bill?

Mr. GOMPERS. Yes, sir.

Mr. FLOYD. In that connection I want to ask another question. You have appeared a great many times before this committee, Mr. Gompers, and I want to say that usually I have been in sympathy with the legislation you were seeking. But since I have been a member of this committee in every instance except this one when you sought legislation in behalf of labor representatives of capital were here protesting. None are here on behalf of the railroads protesting against this legislation. How do you account for that if it is such a good thing for labor?

Mr. GOMPERS. I will say that during the life of the commission which drafted the original bill which was presented to the Senate there were hearings several days each week. The representatives of the railroad companies, the representatives of the railroad brotherhoods, and the representatives of other organizations of labor, myself included, met with the commission. We were questioned, we argued we sought to persuade the commission to one point of view or the

other. The attorneys of the railroad companies were in constant attendance.

At one period of the sessions—the morning that I had made one of the arguments in favor of certain features of a workman's compensation bill—the representatives of the railway brotherhoods and the representatives of the railway companies were agreed upon all features of the bill except one, and that was the schedule, and as to that they did not know how to agree. Their difficulty was, Who is going to name an amount to which the other will agree?

In other words—and I think I was in the confidence of the representatives of the railroad brotherhoods—the point was that they did not want to name a specific amount because they thought they might be able to get something more; and it was to avoid a public statement that would go upon the record that no agreement was had.

I am glad to say that I suggested (and if my memory serves me right the record will show that I made that suggestion) that the representatives of the railroad brotherhoods and the representatives of the railroad companies should come together in private and try to get at some agreement upon the subject of schedules. I was advised later that such an agreement was reached.

I do not know in what position the question of Mr. Floyd places me—whether I do not know what I am talking about, or whether I am talking for a bill which the railroad companies want. In either case I should regard myself in a very unenviable light. I know this: That the compensation law was not a thing that was sought by the employers of England, nor by those of Germany, nor by those of the United States.

They have come to realize through the agitation of the labor organizations, together with organizations of civic character, that compensation is a natural and orderly development to which we shall come. I think the railroad companies in the long run will benefit by it, in that they will be compelled by circumstances and by the needs of the situation to provide themselves with the best facilities that the minds of men can conceive in order to conserve the life and the health and the limbs of their employees.

If the railroad companies are agreed with me, I can not help it. They have disagreed with me often enough.

MR. MOON. It does not necessarily make you wrong when they do agree with you?

MR. GOMPERS. Not necessarily; but I usually question myself then.

MR. HIGGINS. And you have already questioned yourself and decided the question?

MR. GOMPERS. Yes, sir. I think they realize that in a matter of this character they can not stand up against the awakening conscience of the American people.

MR. MOON. Mr. Gompers, do you or do you not know that when the schedule was announced there was bitter opposition on the part of railroads and the railroad lawyers?

MR. GOMPERS. I do not know.

MR. MOON. And that protracted discussions were had before the commission to induce us to reduce those schedules?

MR. GOMPERS. I know that, sir; and I want to repeat this, regardless of who can find comfort in it: The Senate bill provides more generous compensation than is provided in the act of any country in the

civilized world, or the act of any State in the United States. And while I repeat that it does not meet my hopes and expectations, I believe it is the best that can be done at the present time.

Mr. MOON. I understood you to say, Mr. Gompers, that in addition to being in advance of the act of any nation on earth, or any State, it was also in advance in point of schedules of the bill prepared by the Federation of Labor itself, and some other bills?

Mr. GOMPERS. I have already said so, sir.

Mr. CARLIN. Your idea is that the railroads have capitulated, and are simply getting the best terms they can under the circumstances?

Mr. GOMPERS. I think so. I think they can not stand against the conscience of the people. They have made their fight; and I think they realize that workmen's compensation is coming, and see that it is useless to place themselves in the position of further obstructing a measure which is bound to come.

Mr. FLOYD. Mr. Gompers, in the bill that the American Federation of Labor prepared, did you have any provision to the effect that these claims should be put primarily in the hands of a Federal adjuster, appointed by a Federal judge?

Mr. GOMPERS. No.

Mr. FLOYD. Did your bill have an optional feature about it, or was it compulsory? Was the effect of it to repeal the employers' liability act?

Mr. GOMPERS. It was to repeal the employers' liability act; that is, to repeal the common law-defenses.

Mr. FLOYD. The employers' liability act does that, in a large measure.

Mr. GOMPERS. Yes, sir.

Mr. FLOYD. But did the compensation bill prepared by the American Federation of Labor leave it optional with the employee to seek his remedy under existing statutes, or did it make it compulsory that he should receive compensation under that bill or no compensation at all?

Mr. GOMPERS. He had the alternative.

Mr. FLOYD. What objection have you to leaving it in the alternative?

Mr. GOMPERS. I have not any objection other than the desire to make the workman's compensation automatic and to avoid to the fullest extent any litigation.

Mr. FLOYD. I believe that as the representative of labor you appeared before Congress in behalf of the various employers' liability acts that were presented to Congress, did you not?

Mr. GOMPERS. Yes, sir.

Mr. FLOYD. Representing your organization?

Mr. GOMPERS. Yes, sir.

Mr. FLOYD. And the first act of that kind passed by Congress in 1906 was held unconstitutional?

Mr. GOMPERS. Yes, sir.

Mr. FLOYD. Then, in 1908, another such act was passed by Congress, and the validity of that act was upheld only during the early part of this year, in January or February, by the Supreme Court of the United States. Can you give any good reason for advocating a bill that will absolutely repeal that law, before it has been tested by making some other bill the sole remedy? Why not leave that as

it is for the time being and make it optional with the employee whether he will take compensation under the proposed bill, if it is enacted, or under the general statute? Would not that be better for organized labor? This is a comparatively new question.

Mr. GOMPERS. It is.

Mr. FLOYD. Most of your questions you have before Congress for 8 or 10 years before you get them enacted, and sometimes longer than that. Then, why rush so hastily into the adoption of this new legislation, one effect of which will be to completely destroy all State and Federal legislation upon the subject, and make this the sole and exclusive remedy of the injured employee?

Mr. GOMPERS. Under the circumstances, I do not know that I should insist upon making compensation the exclusive remedy. If, in the wisdom of Congress, there ought to be an alternative choice, I shall interpose no objection, if objection on my part would be of any validity at all. But what I had in mind, and what I am speaking for is the avoidance of litigation in matters that really ought to be automatically adjusted.

Mr. NORRIS. If you had an alternative in the bill, you would not avoid litigation.

Mr. GOMPERS. That is the difficulty; that is the reason.

Mr. NORRIS. And it would not establish, in reality, the principle of workman's compensation that is involved in this bill.

Mr. BRANTLEY. Mr. Chairman, if Mr. Gompers will permit me, in connection with the particular question that we are now dealing with, the alternative feature, I wish to state on behalf of the commission appointed to investigate this question that we investigated it as thoroughly as we were competent to do it. After an exhaustive investigation we reached the conclusion that if we allowed to remain on the statute books the negligence liability law under which the railroad companies were to be mulcted in unlimited amounts where they were negligent, and then enacted in addition an arbitrary compensation law providing that where they were not negligent they should still be mulcted in fixed amounts, such a compensation law would be in violation of the clause of the Constitution prohibiting the taking of property without due process of law, and the whole scheme would fail as being in violation of the Constitution.

Aside from any question of policy whatever, the commission, with the lights before it, reached the conclusion that we were compelled to make our compensation law complete and exclusive of all other laws, enacting it as a regulation of commerce, under which an offset is given to the railroads for the arbitrary taking of their property under compensation, by releasing them from suits for negligence, and that it was essential to do this in order to get any compensation law at all.

I think that statement ought to go in the record at this stage of the proceedings.

Mr. GOMPERS. Mr. Graham has handed me this letter, which I should like to read into the record, if I may:

ILLINOIS STATE LEGISLATIVE BOARD,
BROTHERHOOD OF LOCOMOTIVE ENGINEERS,
April 3, 1912.

HON. J. M. GRAHAM.

DEAR SIR: We, the undersigned, representatives of 4,000 locomotive engineers in the State of Illinois, earnestly request and urge you to vote for the workman's com-

pensation bill which has been introduced in the Senate as S. 5382 by Senator Sutherland, and in the House as H. R. 20487 by Mr. Brantley.

Hoping and trusting that you will give this matter your best consideration, and that our request be granted, we are,

Yours, respectfully,

J. A. CULP, *Chairman.*

C. E. LONG, *Secretary-Treasurer.*

And there is the seal of the organization attached.

I do not know that I have anything further to take up your time with this morning, gentlemen. I want to thank you for your consideration.

Mr. BRANTLEY. Mr. Chairman, if the committee is willing to hear him, there is here Mr. Hoskins, a member of the Brotherhood of Locomotive Engineers, who was at Harrisburg when this matter was discussed by that convention. I should be glad to have him make a brief statement to the committee.

The CHAIRMAN. The committee will be very glad to adopt the suggestion made by Judge Brantley, and to hear Mr. Hoskins at this time.

STATEMENT OF MR. T. J. HOSKINS, OF OGDEN, TENN., MEMBER OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS.

Mr. HOSKINS. Mr. Chairman and gentlemen, in beginning to address you, I will compensate you for your kindness in agreeing to hear me by promising to be very brief.

It is upon the special request of my friend, Mr. Wills, who could not be here this morning, that I appear before you, he thinking that a statement of the position our national legislative body had taken upon this all-important question was entirely too essential to the right determination of this question to be omitted.

As has been stated to you, I was a delegate upon the floor of the Harrisburg convention of the Brotherhood of Locomotive Engineers. There is one distinguishing feature of that convention that I think you should regard.

Mr. HOUSTON. What was the date when that convention was held?

Mr. HOSKINS. We began on the 8th of May and held our last session June 1.

Mr. HOUSTON. Of what year? This year?

Mr. HOSKINS. We began the 8th of May of this year and closed June 1. I am on my way home from that convention now.

The especial feature of that convention that I wish you to observe is this: Not a single delegate can appear upon the floor of that convention who is not in active service, running a locomotive engine, unless possibly he may have been removed since his election. So that unless there was some extraneous pressure from some one unseen that body represented solely the interests of the men upon the engines in America; and no man had any other occupation that he needed to regard in taking his position upon that floor.

On the second day of the convention, as quickly as we could reach it, we took up the question of workmen's compensation, with a motion from the floor that we indorse it. The discussion began and continued until night. The next day, as soon as the preliminary business could be gotten out of the way, the discussion began again and went on most of the day, until at last—I suppose I might mention

who it was—after I had closed an address before the convention, the previous question was moved, carried by an overwhelming majority, and the proposition indorsed by a viva voce vote.

Then, on another day—I do not remember whether the next one or not—some of the delegates who opposed the measure claimed that they had not been sufficiently heard; that there were some divisions that had instructed their delegates; and they desired a reconsideration of the question. To that we consented, debated it again, and reindorsed it by a much larger vote than we had the first time, only two or three members, I believe, asking to be recorded against it.

I may say that it is much of a surprise to me to find that our action upon that question has been doubted anywhere at all, because we were the first organization to assemble in national council after the question had become vital in Congress, and our action has been heralded far and wide.

I suppose I should state to you briefly the considerations upon which that convention decided in favor of workmen's compensation and against employers' liability.

We do not discuss either employers' liability or workmen's compensation from the legal point of view. We take the humanitarian side of the question. From our viewpoint employers' liability has proven wanting in the great end for which we have striven.

To make our policy plain, I will state that about 1878, I think, we passed an order requiring every man who joined the Brotherhood of Locomotive Engineers to take out and carry an insurance policy in favor of those dependent upon him. We have enforced that order until this day, without regard to whether the member wants to carry the insurance or not. If he becomes a member of our organization he must carry it, and if he ceases to carry it we expel him. The object of this great labor organization is to take care of every family when its support is taken away; and the number of men who have lost their lives in railroading is so appalling that it keeps the question alive among us.

I believe the statistics show, do they not, Senator, that about 50,000 men have been killed since the statistics have been kept?

Senator SUTHERLAND. An average of about 4,000 railroad employees are killed every year.

Mr. HOSKINS. We have had 430 men killed since our convention at Detroit two years ago. The official report shows 430 men killed on the engines.

Our aim being to get some relief to every stricken household, what does employer's liability do? The last act, passed in 1908, amended in 1910, and recently approved by the Supreme Court, merely widens the scope of recovery. Some few more employees can recover now than could recover before. There can be a recovery by those who can prove that the injury is due to the negligence of some other employee, or to a defect in some of the machinery, works, or ways, which defect must have been due to the negligence of some other employee. But one of the greatest difficulties our organization has ever encountered has been to prove things, sometimes.

Even though men have the knowledge, they are very reluctant about saying "I know so-and-so," and about going into court and stating it.

What happens? The man, the head of the household, is dead and gone, killed in an accident. His lips are forever sealed. He can not speak. The widow is thrown absolutely upon what she can prove. What is more (and a question comes up here that I think we ought to explain), she must finally pick up the courage, amid her grief and perhaps her want, when in many cases the little insurance that her husband carried has been absorbed in paying off the debt on the home (you all understand how that goes), to assume the immense task of prosecuting a lawsuit, and she must seek a lawyer.

There are certain lawyers to whom this organization owes very, very much. The ablest lawyers of the profession have studied the question, as much as an act of charity as of compensation. They have given their talent to this department of law. They have won some difficult suits, made them matters of record, and blazed the way for other suits of similar character. To those men we owe a lasting debt of gratitude.

But what happens? You gentlemen are as well acquainted with the profession as I am. Those men observe the ethics of their profession. They do not put runners on the road seeking cases. The result is—and I make this statement upon facts of my own knowledge, in some cases; I do not want to make it a general statement, because I want to confine it to the things that I know about—it happens that somebody of the legal profession, perhaps within 36 hours from the time a man has been killed, steps into the home and begins to advise the widow that there is an element of recovery in the case, “and if you will get such and such a lawyer he can win it for you.”

Ultimately that suggestion bears fruit, and the widow goes forth, not getting this able lawyer who has blazed the way, and who has devoted his time and his talent to that branch of practice, but getting the man none too well skilled. And if she does not lose the suit she finds herself bound by a contract to pay 33 or 45 per cent of the recovery as a contingent fee, and then, as auxiliary to that contract, such legal expenses as may be incurred.

I saw one case settled not long ago, after it had been tried three times, where the incidental expense was \$873, after the fee had been paid.

That is the condition in which this organization finds itself. The man is killed and gone, leaving the widow and her children with one alternative, and that a lawsuit, with the only hope of recovery depending upon whether or not she can prove negligence.

The uncertainty does not stop there. This organization is nationwide. Its members reside in every State. You will observe, from the character of the discussions here, that some of the States in the Union adhere strongly to the present law of liability. Others are not concerned in it. This organization must take a nation-wide view. Go down into Georgia, where the sentiment is favorable to the employee, and the juries render large verdicts. Go into Texas, go into North Carolina, take some of the States along through there, and we know that large judgments have been awarded to those who can prove negligence.

But go right into some other State, and there the juries are rendering verdicts that upon an average are perhaps not more than one-third of what they are rendering in these other States.

To this organization a life is just as dear in one State as in another. A stricken home is just as much deserving of compensation in one State as in another. We advocate a principle that shall bring compensation to all alike.

The CHAIRMAN. You mentioned some of the States where you said the public sentiment and the jury sentiment seemed to be in favor of large verdicts for personal injuries; but you did not mention the other States in which you said that no such enlightened sentiment (if I may use the word "enlightened") prevailed.

Mr. HOSKINS. I told the convention in Harrisburg that according to the statistics that had come to my attention, Pennsylvania gave the smallest verdicts of any State in the Union; and those statistics are published, I believe, by either the Department of Commerce and Labor or the Interstate Commerce Commission.

Mr. MOON. And it is more difficult there to get a verdict?

Mr. HOSKINS. And it is more difficult there to get a verdict; that is true. Pennsylvania is the lowest, while either Texas or Georgia is the highest, I think.

Mr. GRAHAM. Do you not find, too, that there is a great difference depending upon whether the case is tried in a large metropolitan city or in a small country town?

Mr. HOSKINS. I believe that would have an influence. But without an effort to be specific, under the liability law the recovery in the first place depends upon proof of negligence. The amount depends upon the caprice of the jury, provided it is not so large that the judge sets it aside. So there is simply a wilderness of uncertainty.

But there is one other thing to which I want to call your attention, by special request.

Mr. FLOYD. Let me ask you a question right in that connection. You say the objection to the present plan is the element of uncertainty.

Mr. HOSKINS. The many elements of uncertainty.

Mr. FLOYD. I want to ask you if this bill as drafted removes any element of uncertainty about one of these damage suits, except that it fixes the maximum amount that the injured employee can recover in definite cases?

Mr. BRANTLEY. It fixes the minimum, too.

Mr. FLOYD. The maximum.

Mr. BRANTLEY. And the minimum, also.

Mr. FLOYD. It fixes the maximum amount; that is certain. You can not recover above a certain amount.

Mr. BRANTLEY. Or below a certain amount. There is a minimum as well as a maximum.

Mr. FLOYD. Well, yes; it does fix a minimum as well as a maximum.

Mr. HOSKINS. The question, as I understand it, is, Does it remove any other uncertainty?

Mr. FLOYD. Do you not have to have a proceeding? Do you not have to go before an adjuster, and do not the parties have a right to go into court? Is there not a possibility of taking the matter through all the courts before it is decided, under this law.

Mr. HOSKINS. I want to get at the question. Does it remove any other uncertainty?

Mr. FLOYD. Yes; any other uncertainty, except to fix the maximum and minimum compensation?

Mr. HOSKINS. The old law, as I have just stated, gives recovery to those who can prove negligence; and I think the statistics show that about 48 per cent can prove that in the actual trial.

Mr. MOON. No; they do not show anything like that. They do not show over 30 per cent.

Mr. HOSKINS. Not over 30 per cent?

Mr. MOON. No, sir.

Mr. HOSKINS. All right. I think under the new law every employee who receives any injury in the course of his employment may recover, unless he be drunk——

Mr. FLOYD. I am talking about the question of procedure. You are talking about another principle of law.

Mr. HOSKINS. I am talking about the recovery.

Mr. FLOYD. I concede that it introduces a new principle.

Mr. HOSKINS. To be sure it does.

Mr. FLOYD. And that the party who has been injured can recover under this law, even when he has been wholly negligent and the railroad company has not.

Mr. HOSKINS. To be sure.

Mr. FLOYD. I concede that. I am talking about the administrative features of the law, the enforcement of it—the manner of procedure in the enforcement of the law.

Mr. HOSKINS. The enforcement of the law, of course, is first before an adjuster, whose findings shall be *prima facie* binding; and upon that adjuster's findings a writ may issue, and payment may be compelled unless it be appealed from. The law removes absolutely the element of chance as to how much the jury will award. If they find the employee entitled to recover, they turn to the statute, and there is the amount.

The position of our organization—and that leads me right to what I wanted to be sure to explain—is this, as to the amounts of recovery:

Our organization is on record as thinking they are too small; but it has separated the two questions and has said, "Give us a principle of compensation broad enough to embrace all the men who are killed and injured and use your judgment as to what the amount of compensation ought to be."

We go to a jury in the trial and plead the case before 12 men. We come now to the National Congress and plead before it the case as to the amount. We may later appeal to the nation as a jury and contend that the amount finally to be allowed is not sufficient. But the position of this organization that I want to force to full recognition is this—and I make this statement upon the request of Mr. Wills, the authorized representative of the organization:

We advocate larger amounts of benefits for the engineers who may be killed upon railways. But we do not advocate that at the expense of cutting down the minimum. We take the position that \$25 at the lowest allowance to a household is low enough, and that if we must raise our compensation by striking crumbs from that stricken household we ask it not at all. If we are not entitled to a higher rate for the engineer upon the pure consideration of his long service and the hazard that he assumes we do not ask that the money to be awarded be divided any more liberally to us than it has been by this bill; and we want that distinctly understood.

Mr. GRAHAM. That sentiment does you and your order great credit.

Mr. NORRIS. Yes, indeed.

Mr. HOSKINS. I might say this: We went against one obstacle that no other organization goes against in advocating this bill. Here are our engineers, averaging from two hundred dollars a month on the best runs to two hundred and twenty-five, two hundred and forty, and two hundred and fifty dollars a month. We have gone before our grand body, pleading for the principle of workmen's compensation, and saying to them that it is a barbarous process that takes a large verdict and puts it into one household and gives not a penny to another household right by the side of it. The principle of giving something to each stricken household is of such unspeakable importance that we will take it, even though the compensation does not meet our approval, and we will make the sacrifice in the interest of humanity. That position has been overwhelmingly sustained by the Brotherhood of Locomotive Engineers in their national convention.

The other matter that I think should have paramount consideration is the interest of humanity in the whole question. It is not merely a controversy between the employer and the employee, though we sometimes argue about how much compensation we shall have. But when the man, the head of the household, is stricken and taken away, and a woman is left with some little children to raise, and perhaps a debt on the home, they are thrown adrift in the world. If you neglect a large percentage of those households, and make them merely an object of chance, you commit to the gutter a large percentage of the children of America. It does not touch that difficulty that you get some big verdicts and take them down to part of those households. Humanity compels us to take the view I have outlined; and our organization would condemn itself before the world were it to stand out against it simply because we can not get the longer end of the money.

That is the position that we desire to be understood as taking.

One more thing, and I am through. The discussion upon this bill arises largely from the lawyer's end of the question. There is no doubt about that. We all know it and understand it fully. I have friends in the legal profession who make money. Some of you gentlemen know the name of Gen. Pickell, who was for 16 years the attorney general of the State of Tennessee. He said to me three or four months ago, "Hoskins, you know it will damage my business and reduce my income if you should pass the workmen's compensation law. But I am not narrow enough to attempt to defeat you in that undertaking for my own personal interest. The best thing you can do is to put that principle upon the statute books of this country."

That is the statement of one great lawyer whose friendship I covet. But it has been shown that from 33 to 45 per cent of the recoveries is taken in legal fees, amounting to \$4,500,000 a year, paid to the most alert and competent men that the legal profession can produce. They will not willingly make the contribution.

They are going to fight, as long as they can, to preserve the negligence law of liability.

But whose interest is at stake? Here are the great transportation corporations, employing thousands and thousands, even more than

a million, of men. Every time an injury occurs we must go into the turmoil of a lawsuit; the relationship of employer and employee must be broken, so to speak, and we must become antagonists for the time being.

Put a straight compensation law upon the statute books and you will remove the most potent bone of contention between us, and you will leave us to promote an era of industrial peace. For that we are willing to yield something, and to promote that the interests of every well-meaning citizen ought to be enlisted, even though it must be at the expense of those who make money out of litigation. The interest of the public at large in the promotion of this era of industrial peace is far more important and should be given the superior consideration.

I think, gentlemen, I have stated to you briefly the views of our organization and most of the views, as I remember them, that were presented in the debate before our convention, which finally led to our action in indorsing the workman's compensation bill that is pending here.

The committee thereupon took a recess until 2.30 o'clock p. m.

AFTER RECESS.

At the expiration of the recess the committee resumed its session.

The CHAIRMAN. The committee will be in order.

Mr. BRANTLEY. With the permission of the committee, Senator Sutherland, who is the chairman of the Workmen's Compensation Commission, is present, and would like to make a statement to the committee. I would be very glad to have the committee hear him.

The CHAIRMAN. The committee will be very glad to hear Senator Sutherland.

STATEMENT OF HON. GEORGE SUTHERLAND, A SENATOR FROM UTAH.

Senator SUTHERLAND. Mr. Chairman, I have no desire to occupy the time of the committee at any great length, but I do want to call attention to two or three matters about which I think there has been a great deal of misunderstanding.

In the first place, I want to speak of the genesis and the evolution of this proposed measure. I understand it was charged yesterday by a gentleman who spoke to the committee—Mr. Coburn—that this bill had originated at the railway claim agents' convention. That statement is utterly false, and I marvel that anybody who had the slightest knowledge of what has been going on before this commission could make it. Of course, I do not want to say that it was deliberately false, because I do not believe anybody would come before the committee and make a deliberately false statement. But at any rate it was recklessly made, because the slightest inquiry, the slightest investigation of the hearings before this commission, would have disclosed the lack of foundation for the statement.

The CHAIRMAN. In that connection, Senator Sutherland, I may say that before this bill was introduced other bills had been introduced on this subject, although not in the form of this bill. For

instance, the first bill I recollect that was introduced several years ago pertaining to this subject was introduced by Mr. Sabath of Illinois.

Senator SUTHERLAND. Yes.

The CHAIRMAN. And it contained the idea that is in this bill. It did not have all the features of this bill, and perhaps Judge Sabath himself would not agree to all the features of this bill, but I know he had the idea in his mind a Congress or two ago, and put it in the form of a bill, that we ought to have a Federal compensation act.

Senator SUTHERLAND. Judge Sabath is, I think, so far as Congress is concerned, the pioneer in this sort of legislation, and I know of nobody in the country who is more entitled to credit than Judge Sabath for whatever may be the ultimate result of this legislation. His bill was presented to our commission, and was carefully considered, and we availed ourselves of many suggestions contained in that bill.

I may say that this commission was appointed originally nearly two years ago, but no hearings were held for some little time. Finally one member of the commission died, another member of the commission from the Senate failed of reelection, and a member of the commission from the House also failed of reelection, so that the commission was reorganized. I became a member of it, I think, in April a year ago, and immediately after the commission was reorganized we began our investigation into the subject and our hearings.

The first hearings were held on May 10, 1911, and we continued those hearings on June 14, 15, and 16, 1911. Those hearings were devoted to the question of the constitutionality of legislation of this character.

There came before the commission gentlemen representing the railroad companies, gentlemen representing the railroad employees, college professors, and students of this subject from various parts of the country, and the constitutionality of the question was discussed at great length. I think with one exception—that being Mr. Thom, who represents the Southern Railway—all the railway counsel took the position and argued very strenuously that this proposed legislation was utterly unconstitutional. Mr. Thom, however, took the contrary view and made an exceedingly strong argument in favor of the constitutionality of the legislation.

Mr. Judson, who is the author of a work on interstate commerce, and Mr. Frank B. Kellogg were employed by the railway associations to represent the employees. Both of them came before the commission and made arguments in support of the constitutionality of the proposition and in favor as a practical proposition of this sort of legislation.

After we had listened to these gentlemen on the constitutional questions we then took the matter under advisement, held a number of meetings, and came unanimously to the conclusion that such legislation was constitutional. We accordingly notified the various parties who were interested. Then we called some meetings at Chicago for the purpose of hearing from people who might be interested upon the practical questions—that is, to get a general survey of the whole field. There came before us at that meeting a very large number of interested persons.

After that series of hearings had been concluded we came to Washington and held some additional meetings in Washington; and

after those meetings had been ended, and after a series of conferences, we issued a circular, which was printed. I have not a copy of the printed document—at least I was unable to find it—but I happen to have one of the carbon copies from which the print was made, and if anybody cares to examine that he will find that in that circular we outlined in general terms the tentative conclusions of the commission as to what should go into a compensation law, stating in very general terms that, for example——

Mr. FLOYD. Have you any objection to incorporating that at this point?

Senator SUTHERLAND. Not at all; I will put it into the record. But I want to show, if I can, how thoroughgoing this whole investigation has been all over the country and how independent it has been. We have not taken anybody's statement for it. We say:

The commission to investigate the subject of employers' liability and workman's compensation have tentatively agreed to recommend legislation along the general lines which follow.

1. The law to provide for payment of compensation by interstate carriers engaged in interstate transportation to employees sustaining injury by accident while engaged in such transportation, except in cases of willful misconduct, to be hereafter specified.

You will observe there that we specify an exception in the case of willful misconduct. When we came to frame our bill we departed from that, and instead of following the English law, which excludes a man who has been guilty of willful misconduct, we eliminated that and provided that there should be recovery except in a case where a man had intentionally brought upon himself the injury.

That exact provision, so far as I know, does not exist in other laws upon this subject.

Mr. FLOYD. There is one other exception, is there not—in case of drunkenness on duty?

Senator SUTHERLAND. Yes; where injury results from drunkenness in the course of duty.

2. The compensation to be paid by the employer directly, and not out of a general fund created by any form of taxation.

We fully considered that question. In a general way, there are two schemes that are presented with reference to compensation. One, roughly, is the German scheme whereby the employers are taxed, and out of that tax a general fund is created, and out of that general fund injured employees are paid.

Mr. MOON. That scheme was very strongly urged upon us.

Senator SUTHERLAND. That scheme was very strongly urged upon us by a number of gentlemen, and particularly by Mr. Dawson, who is, I think, one of the leading authorities in the country upon this subject.

Mr. MOON. And Mr. Carey also.

Senator SUTHERLAND. But I will not stop to go into a discussion of that. After very thorough consideration we believed that the best scheme to adopt was that of direct payment; and one of the strong reasons that influenced me in coming to that conclusion was that I believed if you impose liability directly upon the railroad companies to pay the compensation in every case of injury or death, that would operate as a great incentive to the railroad companies to cut down their accidents, because every time they cut down the number of accidents occurring upon their roads they save their treasury.

We appeal to their self-interest in that way, whereas if we had proceeded under the German system of imposing a tax which would be uniform upon all railroads, the effect would have been to penalize the best-managed road for the benefit of the worst-managed road. The worst-managed road, paying the same tax as the best-managed road, of course would not have the same incentive to cut down its accidents, because it would not, in the same degree, at any rate, save its treasury.

Mr. MOON. That was only one of the reasons?

Senator SUTHERLAND. That was only one of the reasons. There were a very great many reasons.

3. That the law shall be in form compulsory and not subject to election by either employer or employee.

4. The remedy provided by such law to be exclusive of any common law or other statutory remedy. * * *

I will not stop to read the various provisions, but with the permission of the committee I will incorporate this in the record.

The CHAIRMAN. We shall be glad to have you incorporate it.

The above-mentioned paper, presented by Senator Sutherland, is as follows:

The commission to investigate the subject of employer's liability and workman's compensation have tentatively agreed to recommend legislation along the general lines which follow.

1. The law to provide for payment of compensation by interstate carriers engaged in interstate transportation to employees sustaining injury by accident while engaged in such transportation, except in cases of willful misconduct, to be hereafter specified.

2. The compensation to be paid by the employer directly and not out of a general fund created by any form of taxation.

3. That the law shall be in form compulsory, and not subject to election by either employer or employee.

4. The remedy provided by such law to be exclusive of any common law or other statutory remedy.

5. To apply to all accidents resulting to the employee while in the course of his employment, except those where the disability continues for a period of two weeks or less, the employer, however, to furnish medical and surgical assistance to an amount not exceeding \$200.

6. Payments of compensation to be made under the law shall be made periodically, and not in lump sums, with, however, appropriate provision for commutation at any time after the lapse of six months on the application of either party.

7. The amount of payments to be limited to a minimum and maximum sum, and not to continue beyond a specified term of years, to be hereafter fixed. The question as to whether or not this limitation shall apply to permanent total disability is left open.

8. The amount of all payments to be based upon a percentage of the wages received by the injured employee at the time of his injury to be hereafter fixed.

9. All claims arising under the law shall be nonassignable and exempt from levy.

10. In case of death, payments to be made to dependents, including alien dependents.

11. All claims under the law to be made preferred lien.

12. Whenever any railway company and its employees have agreed or shall hereafter agree upon a plan of compensation which is as favorable to the employees as the provisions of this law, such plan may be substituted for the law, provided that wherever in any such plan the employees contribute to the compensation fund, the plan shall contain beneficial provisions in addition to the schedule of payments equivalent to such compensation.

13. The character and extent of the administrative features of the law have been left open for future determination, and the commission will invite suggestions with reference thereto, as well as suggestions respecting the details of the law, to be made at the public hearings to be hereafter held.

The commission will resume its public hearings on Monday, the 6th day of November, next, at 10.30 a. m., at the Senate Office Building in Washington, room 210, and invites the attendance and suggestions of all persons interested respecting the plan outlined.

Senator SUTHERLAND. The commission caused to be printed some 30,000 copies of this document to which I have called attention, and a copy of it was sent to every railroad men's organization in the United States. It is perfectly idle for railroad employees to come here now and tell the committee that they knew nothing about the proceedings. If any railroad man knew nothing about it he simply neglected his opportunities, because the desire of the commission was to give this subject the utmost publicity. As I say, this circular was sent to every railroad organization in the country, and by that I mean every local organization.

In addition to that, we caused letters to be written to all these railroad men's organizations, as well as all the railroad employers of the country, asking for information in great detail. We got replies from quite a number of railroad organizations and replies from, I think, some 57 per cent or more of the railroad companies of the country. From and with those replies we compiled the statistics that form a part of the report of the commission.

After that general statement had been sent out we held another series of meetings at Washington, and these general tentative suggestions were discussed before us by the parties who were interested. Participating in that discussion and conference there were quite a larger number of railroad employees. I think there were in almost constant attendance upon our commission while we were considering this matter, step by step, from 30 to 50 representatives of railroad organizations. Mr. Wills was there; Mr. Garrettson was there; Mr. Lee was there; Mr. Holder, representing the employees of railroads that were in the Federation of Labor; and a large number of other gentlemen.

Mr. MOON. And Mr. Gompers.

Senator SUTHERLAND. And Mr. Gompers; yes.

Mr. CARLIN. May I ask a question?

Senator SUTHERLAND. Certainly.

Mr. CARLIN. Will you tell us why the commission prefer monthly payments in case of injury or death to a lump sum?

Senator SUTHERLAND. The reason the commission preferred monthly payments as opposed to a lump sum was that our investigation showed that when a lump sum was paid, in the vast proportion of cases, it was dissipated in a very short time. The average railroad man, while it is true he is above the average of intelligence and ability among workingmen, is nevertheless not a financier. If he were a financier he probably would not be in the railroad service. Our attention was brought to cases where men were killed upon the railroad, and the widow, with a family of children, had been paid a lump sum of money—two thousand, twenty-five hundred, three thousand, four thousand, or five thousand dollars—and in the vast proportion of the cases that money had been dissipated by improvident speculation, or in some other way, in a short time.

The object of the bill is to take care of these people, to take care of the man during the time he is suffering from his injury and unable to work, and to take care of his family; and it was the opinion of the

railroad men who came before us that it would be far better to provide for these periodical payments than to entrust to the beneficiary a lump-sum payment. However, we provided in our bill that application might be made to the court to convert these deferred payments, these periodical payments, into a lump sum when it was made to appear to the court that it was for the best interest of the applicant to have it done, or when the person receiving the payments had departed from the United States, or was about to depart from the United States, and perhaps in one or two other instances.

I think it is almost universally agreed by people who have investigated this subject that one of the great benefits of the workman's compensation law lies in this provision for making periodical payments as opposed to lump-sum payments.

Mr. CARLIN. You say there is a provision in the Senate bill which permits application to a court?

Senator SUTHERLAND. Yes.

Mr. CARLIN. For the payment of the lump sum?

Senator SUTHERLAND. For the commutation of the periodical payments into a lump sum.

Mr. MOON. That is also in the House bill.

The CHAIRMAN. Yes; that is also in the House bill.

Senator SUTHERLAND. Yes; it is.

Mr. CARLIN. Was that favored by the railroad employees?

Senator SUTHERLAND. Yes; it was.

Mr. MOON. Was it not also strongly supported by the experience of the commission?

Senator SUTHERLAND. Undoubtedly, it was supported by the experience of the commission. I do not know of a single European country—there may be some—where lump sum payments are provided for. They are generally, at any rate, periodical payments.

Mr. NORRIS. In that connection, I would like to ask if this is not true; I suppose the same principle that is applied by the insurance companies would apply. If the payments are made monthly, as provided in the bill, the aggregate amount received by the widow or the beneficiary would be greater, of course, than if they got it in a lump sum?

Senator SUTHERLAND. Yes. That subject you will find very fully discussed in the hearings. We give them more in the aggregate because we extended it over a period of years than we would give if they got a lump-sum payment.

Mr. STERLING. You pay them the present worth?

Senator SUTHERLAND. Yes; the bill itself provides that when it is commuted it shall be calculated at the present worth, on the basis of 4 per cent, which is very favorable to the employees. The original bill provided for 5 per cent, but the Senate cut it down to 4.

Mr. MOON. One of the troubles in England and the other countries being that when these people wanted to commute, the lawyer had a great advantage and would exact terms. We made that impossible.

Senator SUTHERLAND. We made it impossible by making it practically automatic. Let me say to the committee now that we have eliminated from this bill a very large number of provisions that exist in foreign laws and which have resulted in more or less uncertainty and more or less litigation. Our effort has been all the way through,

without sacrificing anything, to make the operation of the bill as nearly automatic as we possibly could.

Mr. NORRIS. Senator Sutherland, this has occurred to me. That there perhaps ought to be a difference between allowing the commutation to be made where the employee is injured, and in case of his death. If he still lives the objection with relation to the dissipation of the fund would not be so great as though he had died and it had gone to his widow, who, in perhaps ninety-nine cases out of one hundred, has had no experience in business affairs.

Senator SUTHERLAND. That is quite true. There is a difference in the degree, but not sufficient difference——

Mr. NORRIS. I have observed very frequently that where men die and leave their wives insurance paid in a lump sum, while they had provided as they supposed in their lifetime to keep their wives, as a matter of fact the widow never got any real benefit from the money because she had no business experience, and it came to her at a time when she had just lost her husband, and even if she had been a business woman she was not capable at that time of handling it. Some friend would handle it for her and make some mistake, and lose it.

Mr. MOON. Is it not true, Senator, that the proposition for periodical payments came almost wholly from either the commission or the laboring men?

Senator SUTHERLAND. Yes.

Mr. MOON. And that the railroads themselves favored the other plan?

Senator SUTHERLAND. Yes; the railroads favored the other plan.

Mr. MOON. They would greatly prefer to make the lump payment, because they spoke of the great difficulties of carrying these people on their books and the great difficulty that would ensue if the people went to another State or to another country, to keep inquiring as to whether they were being defrauded or not.

Mr. NORRIS. It seems to me I would favor a provision making it impossible for the widow to take it in a lump sum.

Mr. MOON. A case might be presented where there was a mortgage on a house and where the getting of the lump sum of money might be a great saving, and we left the court to decide upon that.

Senator SUTHERLAND. After the hearings I have spoken of I was instructed by the commission to prepare, for the purpose of discussion, a tentative draft of a bill. In making that tentative draft I consulted, so far as I could obtain them, the laws of the various countries of Europe that had been translated, and the laws that had been either suggested by State commissions or passed by State legislatures; and after as complete a study of the whole subject as I could make, I prepared a tentative draft of a bill. That is here as it was originally typewritten. That was presented to the commission, and various changes were made in it. After the changes had been made I had printed a copy of the bill as we had agreed upon it. I have that copy, and if anybody is curious enough to go through it he can trace the evolution of this bill from the very beginning, and see how it has been built up, step by step. The last draft of the bill no more resembles the original draft than a completed house resembles the foundation upon which it is erected.

You will see, as you go over the bill, the various changes that were made. Here is an entire change made in the title of the bill. A change is made in the first section; and so on, all the way through, you will see it.

That passed through successive drafts, successive prints; and I hold the whole bundle of material here in my hand, so that if anybody is curious enough to go through it he can see how this bill has been built up.

It has been said that some claim agents' association had prepared a tentative bill. So far as I am concerned, and I think so far as every member of the commission is concerned, we never had heard of any claim agents' convention, or any claim agents' bill, until it was suggested a few weeks ago in the Senate by Senator Reed, of Missouri. I was absolutely astounded when he made that statement. Mr. Whiting, who has been spoken of as having been present at this claim agents' meeting and as having participated in it, was before our commission, and we availed ourselves of information which Mr. Whiting had. He sat with the commission for a number of days, and gave us very valuable information, because he is thoroughly familiar with the operations of his road.

He was brought to the attention of the commission by a member of the commission, namely, Mr. Brown, the president of the New York Central lines. Mr. Brown stated to us that Mr. Whiting was well informed upon these subjects; that he, Mr. Brown, could not be present all the time, and that we were at perfect liberty to have Mr. Whiting remain with us, and to get such information from him as we could; and we did. He sat with us; and he and Mr. Cease—Mr. Cease being the representative of the railroad employees—frequently conferred together about disputed matters. Sometimes they agreed and sometimes they did not; but the information that we got from both Mr. Cease and Mr. Whiting was valuable.

After this matter was mooted with reference to the claim agents' convention, I had the secretary of the commission write to Mr. Whiting and ask him about the matter. Mr. Whiting replied that there had been such a convention, and that that convention had prepared a bill, and he sent me a copy of it. I have it in my hand, and I am going to put it into the record; and you will see, if you examine it, that it has not the remotest resemblance to the bill that is presented by this commission. I will venture to say that there is not a phrase in this claims agents' bill, or scarcely a phrase, that can be found in our compensation bill, because it proceeds upon altogether different lines.

Take the very first proposition:

SECTION 1. This act is to provide compensation to all employees for damages sustained by reason of injuries received, or for death therefrom within one year, by accident arising out of and in the course of the employment.

The only phrase used in our bill that is found there is the provision "arising out of and in the course of the employment," and that is a stereotyped phrase, used in the original English law and in practically all laws upon the subject. The scheme of compensation is altogether different. In this claim agent's bill they provide that, "employees shall be classified as follows," and then they classify them into four classes, class A, class B, class C, and class D, dependent upon the

amount of earnings which the employees in each class receive. Then they provide:

The amounts to be paid as hereinafter provided for death or for specified permanent injuries shall not exceed the following maximum amounts fixed for each class of service, except as otherwise provided: Class A, \$3,000; class B, \$2,500; class C, \$2,000; class D, \$1,500.

Our bill proceeds upon altogether different lines. We provide that there shall be a minimum payment of not less than \$25 a month and a maximum payment of not more than \$50 a month.

Mr. MOON. For each month.

Senator SUTHERLAND. Yes; I will leave that copy so that it may be examined in detail.

Mr. FLOYD. I presume that will be incorporated in the hearing.

Senator SUTHERLAND. If it pleases the committee.

Mr. FLOYD. I ask that it be printed in the hearing at this point.

The CHAIRMAN. The reporter will incorporate it.

The above-mentioned pamphlet, entitled "Suggested Workers' Compensation Act" is as follows:

DRAFT OF SUGGESTED WORKERS' COMPENSATION ACT.

CHICAGO, *December 13-14, 1910.*

PURPOSE OF ACT.

SECTION 1. This act is to provide compensation to all employees for damages sustained by reason of injuries received, or for death therefrom within one year, by accident arising out of and in the course of the employment.

DEFINITION OF THE TERM "EMPLOYER."

SEC. 2. The term "employer" as used in this act includes the State and all public or quasipublic corporations and any person, partnership, private corporation, or receiver thereof, employing labor in this State, in his trade or business.

SEC. 3. Any employer as defined herein may elect to pay compensation according to the provisions of this act.

TO WHOM AVAILABLE, AND HOW.

Every such employer is conclusively presumed to have made such election unless he has given written notice to the contrary to the (proper State official) within sixty days from the date upon which this act takes effect, and whenever he shall have become subject to it he shall continue to be bound by its provisions from year to year thereafter, unless written notice to the contrary shall have been given to said officer at least sixty days before the commencement of any succeeding year, dating from the taking effect of this act, and by posting a notice to the same effect in or about his premises in every city and town in which he carries on business in the State.

Any employer who has given notice that he will not be bound by the provisions of this act may subject himself to its provisions at the beginning of a succeeding year, dating from the taking effect of this act, by written notice to said officer, and by posting a notice to the same effect in or about his premises, as above provided, at least sixty days prior to such date.

WHEN ASSUMPTION OF RISK, ETC., NOT A DEFENSE.

In a suit to recover damages for injuries or death arising from an accident, occurring when an employer has elected not to be bound by the provisions of this act, it shall not be a defense that the employee either expressly or impliedly assumed the risk of the employment, or that the injury or death was caused in whole or in part by the negligence of a fellow servant.

DEFINITION OF THE TERM "EMPLOYEE."

SEC. 4. The term "employee" as used in this act includes any person employed by an employer for the purpose of his trade or business: *Provided, however,* That persons whose employment is of a casual nature, and minors forbidden to work by the laws of the State, shall not be considered employees within the meaning of this act. Minors not so excepted shall, for the purposes of this act, have power to contract as though of full age.

EMPLOYEE, WHEN BOUND.

SEC. 5. Every employee as a part of his contract of employment shall be conclusively presumed to have accepted all the provisions of this act unless at the time of making such contract he gives written notice to the contrary.

Every employee whose contract of employment is in force at the time this act takes effect, and who continues in such employment, shall, sixty days after the taking effect of this act, be conclusively presumed to have accepted its provisions unless he has given written notice to the contrary.

Any employee who has given such notice shall be bound thereby for one year and thereafter: *Provided, however,* That at or after the expiration of one year he may at any time subject himself to the provisions of this act or having done so, withdraw by giving sixty days' notice in each instance.

The notices referred to in this section shall be served upon the (proper State official) and on the employer in the manner provided in section 14 for serving notice of an accident.

COMMON-LAW DEFENSES.

In a suit to recover damages for injury or death arising out of an accident to an employee who has declined to subject himself to the provisions of this act all common-law defenses shall be open to the employer.

NO OTHER REMEDY AT LAW.

SEC. 6. There shall be no other remedy at law except the compensation herein provided, for injury or death arising out of accident to an employee, when such employee and his employer are bonded by the provisions of this act.

ONE-HALF COMPENSATION FOR MISCONDUCT OF EMPLOYEE.

SEC. 7. Only one-half of the compensation provided in this act shall be paid where injury to or death of an employee is occasioned by his serious or willful misconduct or intoxication, or by his violation of a reasonable written rule provided for his safety, of which he had notice of, or of a statutory regulation affecting the same.

LIEN.

SEC. 8. So far as preference or lien against the employer is concerned, the compensation herein provided for shall stand upon the same basis as wages.

ASSIGNMENT.

No compensation under this act shall be assigned or subject to attachment or liable in any way for debts.

SEC. 9. The compensation payable under this act shall be as provided in the following schedule:

BASIS OF CLASSIFICATION.

(a) Employees shall be classified upon the basis of their average monthly earnings during the last six months of their employment prior to the date of the injury, but where the term of employment is for a lesser period, the average monthly earnings shall be computed on the amount earned during the term of service.

In arriving at the monthly average earnings, computation shall be made on the working days only, and twenty-six days shall be deemed to constitute a month.

(b) Employees shall be classified as follows:

Class A. Those whose average monthly earnings are one hundred and twenty-five dollars or over.

Class B. Those whose average monthly earnings are one hundred dollars and less than one hundred and twenty-five dollars.

Class C. Those whose average monthly earnings are seventy-five dollars and less than one hundred dollars.

Class D. Those whose average monthly earnings are under seventy-five dollars.

(c) The amounts to be paid as hereinafter provided for death or for specified permanent injuries shall not exceed the following maximum amounts fixed for each class of service, except as otherwise provided: Class A, three thousand dollars; class B, two thousand five hundred dollars; class C, two thousand dollars; class D, one thousand five hundred dollars.

HOSPITAL AND MEDICAL EXPENSES.

(d) The employer shall pay reasonable expenses for necessary care and attention at a hospital and for first aid and subsequent surgical attendance when the services of surgeons designated by the employer are accepted, but in no event shall such care, attention, and surgical services exceed a period of six months.

DEATH.

SEC. 10. The amount to be paid in case of death shall be determined by the classification herein provided, and the number, age, and relationship of the next of kin, as follows:

ONE OR MORE CHILDREN UNDER SIXTEEN, WIDOW OR NOT.

(a) In case the decedent leaves one or more children under sixteen years of age, whether there be a widow or not, there shall be paid the maximum amount.

CHILDREN OVER TWO, ADD FIVE PER CENTUM TO MAXIMUM.

(b) In case the decedent leaves three or more children, all of whom are under the age of sixteen, said maximum amount shall be increased at the rate of five per centum for each and every child in excess of two, whether there be a widow or not.

CHILDREN SIXTEEN TO TWENTY-ONE, FIFTY PER CENTUM.

(c) In case the decedent leaves no widow, but leaves children who are between the ages of sixteen and twenty-one, dependent in whole or in part on the deceased, there shall be paid fifty per centum of said maximum amount.

CHILDREN OVER SIXTEEN, UNDER TWENTY-ONE, AND A WIDOW, MAXIMUM.

(d) In case the decedent leaves one or more children over sixteen years of age and under twenty-one years, and a widow, there shall be paid the maximum amount.

CHILDREN OVER TWENTY-ONE, NO WIDOW, TWENTY-FIVE PER CENTUM.

(e) In case the decedent leaves no widow, but leaves a child or children over the age of twenty-one, dependent in whole or in part on the deceased, there shall be paid twenty-five per centum of said maximum amount.

PARENTS AND GRANDCHILDREN ONLY FIFTY PER CENTUM.

(f) In case the decedent leaves no widow or children, but leaves a father, mother, or grandchildren, or either, dependent in whole or in part on the deceased, there shall be paid fifty per centum of said maximum amount.

NO WIDOW, PARENTS, OR CHILDREN—NEXT OF KIN, TWENTY-FIVE PER CENTUM.

(g) In case the decedent leaves no widow, children, father, or mother, but leaves next of kin dependent in whole or in part upon the deceased, there shall be paid twenty-five per centum of said maximum amount.

WIDOW, EIGHTY PER CENTUM.

(h) In case the decedent leaves a widow, but no children, there shall be paid for the sole benefit of the widow eighty per centum of said maximum amount.

ALIENS THIRTY PER CENTUM.

(i) In case the decedent is an alien leaving a widow or next of kin who at the time of the accident resided in a foreign country, there shall be paid thirty per centum of the amount that would otherwise be paid under the provisions of this section.

NO NEXT OF KIN—FUNERAL EXPENSES.

(j) In case the decedent leaves no one entitled to compensation under this act, a sum necessary to defray funeral expenses, not exceeding one hundred dollars, shall be paid.

MORE THAN ONE BENEFICIARY.

(k) Where there is more than one beneficiary or where the sole beneficiary is a minor or under other legal disability, payment shall be made to the probate court or court of similar jurisdiction of the county in which the deceased resided, and shall be distributed in such proportions as such court shall decree.

LOSS OF HANDS OR OF SIGHT, ONE HUNDRED AND FIFTY PER CENTUM.

SEC. 11. The amount to be paid in case of specified permanent injuries shall be determined by the classification herein provided, as follows:

(a) In the event of the severance of both hands at or above the wrist, or the total loss of the sight of both eyes, there shall be paid one and one-half times the maximum amount.

HAND AND FOOT, ONE HUNDRED AND TWENTY-FIVE PER CENTUM.

(b) In the event of the severance of one hand and one foot at or above the wrist or ankle, there shall be paid one and one-quarter times the maximum amount.

BOTH FEET, ONE HUNDRED PER CENTUM.

(c) In the event of the severance of both feet at or above the ankle, there shall be paid the maximum amount.

ONE HAND, SEVENTY-FIVE PER CENTUM.

(d) In the event of the severance of one hand at or above the wrist, there shall be paid seventy-five per centum of the maximum amount.

ONE FOOT, FIFTY PER CENTUM.

(e) In the event of the severance of one foot at or above the ankle, there shall be paid fifty per centum of the maximum amount.

ONE EYE, TWENTY-FIVE PER CENTUM.

(f) In the event of the total loss of the sight of one eye, there shall be paid twenty-five per centum of the maximum amount.

LUMP SUMS.

(g) Where compensation is paid in lump sums, the same shall be in lieu of all other payments except surgical and hospital attention as provided in section ten, paragraph (d), and include all injuries sustained in the accident.

SEC. 12. In cases of total disability not otherwise provided for, where the time necessarily absent from duty exceeds the period of one full week, there shall be paid as indemnity, beginning with the eighth day of such disability, fifty per centum of the minimum rate provided for the class in which the employee belongs when in classes A, B, or C, but when in class D it shall be fifty per centum of the average actual monthly earnings.

Said indemnity shall be paid at the same intervals as the wages earned by the employee were paid during his employment and such indemnity shall continue during total disability for a period of not exceeding two years.

(a) In case an employee sustains an injury, such as the crushing or breaking of the bones of an arm or leg, hand or foot, excluding digits, resulting in permanent injury, and the disability continues for a period of at least six months, said employee shall be entitled to payment thereafter of twenty-five per centum additional indemnity during disability, for a further period of not more than eighteen months.

PARTIAL DISABILITY.

(b) In case an employee is injured so that such injury resulted in the partial loss of a hand or foot, or both, or the loss by separation of three or more digits, an additional payment shall be made when the employee is able to resume work, of a sum equal to fifty per centum of the indemnity which would be paid for a period of six months.

INDEMNITY PAYMENTS DEDUCTED.

(c) In the event of the death of any employee as a result of injuries received within two years from the date of the accident, who at that time is entitled to or is receiving benefits, there shall be paid the amount provided for death in each class less the sum already paid as indemnity.

SEC. 13. Where injuries occur for which lump-sum payments have not been provided in this act, the employer and employee, if the disability shall exceed a period of ninety days, may agree in writing, for the payment of a lump sum in lieu of the compensation herein provided.

LUMP-SUM SETTLEMENTS BY AGREEMENT.

Except as above provided, the employer shall not be relieved from payment in full of the compensation fixed in sections ten, eleven, twelve, and thirteen.

NOTICE.

SEC. 14. No right to compensation under this act shall exist unless notice in writing of the time, place, and cause of the accident resulting in injury or death, shall have been given to the employer within sixty days from the date of said accident.

The payment of any indemnity by the employer shall be a waiver of the notice herein required.

The notice provided for herein shall be in writing, shall contain the name and address of the person injured, shall give the time and place where accident occurred, and shall specify the nature of the injury, and shall be signed by the person injured or by a person in his behalf, or in case of death, by his personal representative, or by one of his distributees.

SERVICE.

Service shall be made either in person, by delivering to and leaving with such employer a copy of such notice, or by inclosing the notice in a sealed envelope addressed to the employer upon whom it is to be served, at his last known place of business, and sent to him by registered mail.

EXAMINATION.

SEC. 15. Any employee who has been injured shall, if so required by the employer, submit himself from time to time for examination by regular practicing physicians provided and paid for by the employer. The employee shall have the right to have a physician provided and paid for by himself present at such examination. If the employee refuses to submit to an examination or examinations, or in any way obstructs the same, his right to compensation or to prosecute any proceeding under this act shall be suspended until such examination has been made.

NONRESIDENT ALIEN EXAMINATION.

In case any nonresident alien becomes entitled to indemnity for personal injuries under this act his employer shall have the right to require physical examinations at some point in this country as often as he may deem necessary to determine the period at which the disability ceased, as provided by the terms of this act in relation to examinations.

Any physician who shall make or be present at any such examination may be required to testify as to the results thereof.

NOT REDUCED BY CONTRIBUTIONS OF EMPLOYEES.

SEC. 16. The compensation herein provided is a measure of the liability which the employer has assumed for injuries or death that may occur to his employees, and it shall not be in any way reduced by contributions from employees.

INSURABLE RISK.

SEC. 17. The compensation to be paid under this act is hereby made an insurable risk. Every insurance company carrying such risk shall be liable to the injured employee or his next of kin, and only a payment of the compensation fixed in this act shall relieve said insurance companies from such liability.

[The Wisconsin plan with reference to an arbitration board is substantially as follows, some modification having been made, and is desirable for the proper administration of the compensation scheme.]

ARBITRATION.

SEC. 18. Any dispute arising under this act or failure on the part of the employer to comply with its provisions shall be submitted to a board consisting of three members, which shall be known as the compensation arbitration board.

Within sixty days after the passage of this act the governor, by and with the advice and consent of the senate, shall appoint three members, one of whom shall serve two years, one four years, and one six years. Thereafter the members shall be appointed for a term of six years each. Vacancies shall be filled by appointment of the governor, but such appointee shall continue in office for a period of not more than thirty days following the convening of the senate in special or regular session. Each member before entering upon the duties of his office shall take the oath prescribed by the constitution. Each member of the board shall receive an annual salary of five thousand dollars.

(a) The board shall organize by choosing one member as chairman: shall adopt its own rules of procedure, which shall be summary in character, but may change same from time to time. Such rules, and the changes which may be made in the same, shall be filed with the secretary of state and shall be in force as soon as they have been filed.

(b) The board may when necessary appoint one or more investigators, or examiners, not exceeding five in number, for such length of time as may be required. It may also appoint a secretary and such other clerical help as may be necessary and fix the compensation for its employees.

(c) The board shall keep its office at the capitol and shall be provided with a suitable room or rooms, necessary office furniture, stationery and other supplies. All necessary expenses shall be audited and paid as other State expenditures are audited and paid. The members of the board, the secretary and such other persons as may be employed shall be entitled to receive from the State their actual and necessary expenses while traveling on the business of said board. Such expenditures shall be sworn to by the person who incurred the expense, and when approved by the chairman of the board and audited as other expenses, shall be paid out of the general funds of the State.

(d) The board shall appoint a time and place for hearings, which shall be held within thirty days after the receipt of an application for such hearing, and may adjourn the same from time to time at its own discretion, either upon the motion of a member of the board, or upon application from either party to the dispute.

(e) The board of arbitration or any member thereof, or examiner therefor, shall have full power to hold such hearings, to subpoena and examine witnesses, administer oaths, compel the production of any books, papers, or records material to the matter in dispute, to visit the place where the accident occurred, to direct the injured employee to be examined by a regular practicing physician and to investigate all matters in dispute. A majority of the members of said board shall constitute a quorum to examine all the evidence submitted relative to the question in dispute. An award in writing by the majority of the board shall be valid and final, from which there shall be no appeal.

ADMINISTRATION OF ACT.

SEC. 19. The Commissioner of Labor (or other proper officer) shall perform the following duties relative to the administration of this act:

(a) He shall receive from employers and employees all notices required to be filed with him under this act, and shall keep a record of such notices in a book used for that purpose, which shall be open to public inspection.

BLANKS.

(b) He shall cause all blanks necessary for the successful operation of this act to be printed and shall furnish the same upon request, free of charge.

REPORTS OF ACCIDENTS.

(c) Each employer coming within the provisions of this act shall, at such times as may be required by the Commissioner of Labor (or other proper officer) make a report of all accidents coming under the purview of this act and the amounts paid on account thereof, and such report shall be in lieu of all other reports now required.

INCONSISTENT LAWS REPEALED.

SEC. 20. All other laws or parts of laws inconsistent with this law are hereby repealed.

FUNDS APPROPRIATED.

SEC. 21. A sum sufficient to carry out the provisions of this act is hereby appropriated out of any money in the treasury not otherwise appropriated.

SEC. 22. This act shall take effect and be in force from and after—

Mr. HARDWICK. May I ask one question?

Senator SUTHERLAND. Certainly.

Mr. HARDWICK. Was the bill the claim agents prepared and proposed a cumulative law or was it exclusive, like the one you prepared?

Senator SUTHERLAND. Really, I have forgotten.

Mr. HARDWICK. In other words, did it give that remedy in addition to the existing law or in place of it?

Senator SUTHERLAND. I really have forgotten.

Mr. HARDWICK. Well, I will look it up myself.

Senator SUTHERLAND. I have very little else to say; but I want to speak with reference to the amount of compensation.

Mr. Gompers, in addressing the committee this morning, stated, what is very true, that the scale of compensation afforded by this bill is the most liberal scale afforded by any law in the world. That was to be expected, so far as the foreign laws are concerned, because our scale of living and the wages paid to our people are better and higher than in those foreign countries; but there have been numerous State laws passed. New Jersey has a law of this character, and Wisconsin—

The CHAIRMAN. Another reason, too, is that the commerce that we handle, both in the matter of passenger traffic and freight traffic, is very much larger than that of any other country. The railroad employees ought to have it because of the service they render.

Senator SUTHERLAND. Let me give just an illustration or two as to the—

Mr. BRANTLEY. Pardon me for just a moment, Senator. This proposed law of the railway claim agents was an elective law. It contains this provision:

Any employer, as defined herein, may elect to pay compensation according to the provisions of this act.

Mr. NORRIS. Do they let the employees elect also?

Mr. BRANTLEY. They let the employees elect also; yes. It says that every employee shall be presumed to have accepted, unless he gives notice that he does not. Then, when they both accept it, it becomes an exclusive remedy.

Mr. HARDWICK. In other words, a man was not forced to leave the existing law and go to their bill?

Senator SUTHERLAND. The railroad companies were all quite insistent that we should make it an elective law. Mr. Thom, who was

very favorable to a compensation plan from the beginning, insisted that that should be done.

Mr. HARDWICK. What reasons do they give for that?

Senator SUTHERLAND. There is some confusion in the minds of some people——

The CHAIRMAN. Pardon me, Senator. Mr. Hardwick wants to ask a question.

Mr. HARDWICK. What reasons do they give for it? Or do they give any reason for insisting on that?

Senator SUTHERLAND. Any reason for insisting on the elective plan?

Mr. HARDWICK. Yes.

Senator SUTHERLAND. They gave some reasons. Their position was that it was a new matter, and they did not know just how it was going to operate, and they preferred to have a choice in the matter.

Mr. STERLING. It was elective to both sides under that proposition?

Senator SUTHERLAND. Just what do you mean?

Mr. STERLING. Mr. Thom urged that it be elective to both sides?

Senator SUTHERLAND. To both sides; yes.

Mr. NORRIS. It was necessary for both sides to ask for it in order to make it operative?

Senator SUTHERLAND. Yes, sir.

Mr. MOON. One of the important reasons that was urged by the railroads, and strenuously urged, with reference to the election question, was this. They said:

One thing is absolutely certain, and that is that these schedules will never be lowered, but there will be constant agitation before Congress every year to increase them; and if it is absolutely imperative upon us to accept them we do not know at what time the roads may be swamped by legislation.

That is a reason they urged.

Mr. HARDWICK. I am much obliged to you.

Senator SUTHERLAND. That was one reason. Our reasons for rejecting it were numerous, but among them were these, which I think are fundamental. An elective law says to the railroads who are to be governed by it: "The law shall not apply to you unless you consent to it." If you say that to the railroad companies in this country it will simply result in a balancing of the question of cost. Any railroad company operating in the State of Pennsylvania, where verdicts are uniformly low, would conclude, naturally, that it would be less expensive for it to operate under the existing law than it would be to operate under the compensation law, and it would decline to be bound by it.

In Texas, where the railroad companies are probably paying the heaviest amounts that are paid in this country, it would be cheaper for them to come under the compensation law, perhaps, and so they would elect to come under the compensation law. But the very circumstances which would induce the railroad companies to accede to the law would induce the railroad employees to reject it. So you never would get them to agree upon it, and you would be confronted with this very peculiar situation—that you would have a law upon your books ostensibly undertaking to regulate interstate commerce, by which perhaps nobody at all would ever be bound.

Such a law as that is no law at all. It is fundamentally unsound. A law, as I understand it, is a rule of conduct prescribed by the law-making power, and it goes into operation and binds the person who is sought to be bound by it wholly irrespective of his wishes. A law is not a law at all—it is mere advice and nothing more—which permit the parties who are to be bound by the law to say whether they will be bound or not.

Then, I think, in addition to that, it is very questionable whether such a law as that would be constitutional.

Mr. HARDWICK. On what ground?

Senator SUTHERLAND. Upon the ground that the effect of it is to delegate the lawmaking power to be individual. You write upon your statute books a certain proposition, and you say to the individual who is to be bound by it, "You may be bound by this or you may not, as you please," and we thereby permit that individual to make the law for himself. And I think it is a very grave question whether or not it is not a delegation of the lawmaking power.

Mr. STERLING. It seems to me that it simply gives permission to the employer and the employee to make a contract, which they can make now if they want to make it.

Senator SUTHERLAND. Perhaps so; but—

Mr. HARDWICK. That would not make it unconstitutional, would it?

Senator SUTHERLAND. At any rate, the objection I have first stated seems to be perfectly sound—that we ought either to make it the law or leave it alone.

Mr. FLOYD. Will you permit me to ask a question at that point?

Senator SUTHERLAND. Certainly.

Mr. FLOYD. What is the objection to making it an absolute law, in so far as the railroad companies are concerned, and leaving to the employee the remedies that are now in existence; leaving it to the option of the employee whether he adopts the remedies under the existing law or under the new compensation act?

Senator SUTHERLAND. I will discuss that; but of course that is an entirely different question. We sometimes confuse the question as to making a law elective and the question as to making it compulsory.

Mr. FLOYD. That would be making it elective only as a remedy.

Senator SUTHERLAND. I will endeavor to state some of the reasons we had in mind for framing the bill as it is. In the first place, one of the principal reasons for passing a compensation law is to get rid of the waste which is incident to the liability law. Roughly speaking, the railroad companies of this country are paying out \$10,085,000 per annum to employees who are injured, or to their dependents when they are killed. That we arrived at by statistics which we gathered, and which were tabulated by experts for us. But whatever it may be, the illustration remains the same. I venture to say that out of that \$10,085,000 at least \$5,000,000 of it is wasted in the process of going from the treasury of the company to the pockets of the employees. It is wasted, in the first place, by contingent fees paid to personal-injury lawyers. I think that, on the whole, the contingent fees paid in that class of cases in the United States will average about 40 per cent.

They run from as low as 33½ per cent up to as high as 60 per cent; but the fair average is somewhere in the neighborhood of 40 per cent.

In addition to that, the employees—not all of them, but enough of them to affect the general average—are put to other expenses which they can not recover in the way of costs. Very often an employee who is injured, particularly one who sustains an injury which affects his nervous system, is compelled to employ a medical expert. I have know of cases and I think there are probably men about this table who have also heard of such cases, where doctors have been employed upon contingent fees to examine into cases and testify in court, and to receive 10 per cent, or 15 per cent, of the amount recovered—and nothing if no recovery was had at all.

And other expenses are incurred which we all know about, and which can not be recovered by the employees as costs. So I think that one-half or \$5,000,000 of this amount is wasted.

Now, to the extent that you make this law supplementary, so that the employee has his election to bring an action at common law or under the liability statute or under the compensation statute, you continue that waste; and you are permitting to be transferred and to go into the pockets of these middlemen, these personal injury lawyers, a vast amount of money that ought to go into the pockets of the employees.

If you are prepared to do that, and you think you ought to liberalize the law to that extent, then the wise thing to do is to increase the compensation to all the men, so as to disburse the fund which would otherwise go into the pockets of the lawyers and be wasted in this process, among these people who are injured.

If I may illustrate it, I will do it in this way. Whether we agree that we have reached the limit of what ought to be done in the way of compensation in this bill or not, we will all agree that that limit can be reached.

In other words, we will all agree that there will come a point where you can no longer burden your industry with an expense of this character. Under this bill, as amended by the Senate, as I estimate it—and my estimate and the estimate of the commission is conservative—the railroad companies, as a whole, will be compelled to pay out about \$18,000,000 per annum, as against \$10,085,000 they are paying now. Therefore, theoretically at any rate, you have got a fund of \$18,000,000 that is to be disbursed for this class of expenses. Suppose we agree that it is not enough. Suppose we say it should be \$20,000,000, \$25,000,000, \$50,000,000, or \$100,000,000—you will reach a point at some time where we must all agree we can go no further. This bill proceeds upon the theory that for an initial bill, at any rate, \$18,000,000 is enough. The whole problem and philosophy of legislation of this character is to determine how that money can be best distributed among the people who are entitled to it, so as to get the most benefit. Therefore you have here a fund which constitutes not an inexhaustible reservoir, but one which can be exhausted.

To the extent that you allow the people who are beneficiaries of the fund to maintain an action for negligence, to that extent you allow some of those people to recover perhaps extravagant judgments and you allow a part of the fund to go in that way and a part of it to be wasted in payment for personal-injury litigation—the payment of lawyers, and so on; and to the extent that you take away from your \$18,000,000 for that purpose you must cut down the amount you pay to the other remaining beneficiaries, who could not maintain an

action of that kind. The whole scheme, the whole philosophy of it, proceeds upon that theory. It is frankly communistic in character, if anybody should balk at that word. It takes this whole class of employees and treats them as a community and says, "We will do the very best we can for all these people, considering their needs, with this sum of money."

Exactly the same reason applies to our making a maximum amount to be paid and a minimum amount. You have in this industry now something like seventeen hundred thousand employees. A large number of them receive less than \$50 a month. Some of them, not so large a proportion, receive more than \$100 a month. The man who receives only \$30 or \$35 a month has not been able to save anything. He is the kind of man who is compelled to work every day in order to eat every day. So we must take care of him first. He is our first concern.

So the first thing we do is to make a minimum that no man shall receive less than \$25 a month, and that no family of such a man shall receive less than \$25 a month. If that were not done, and he were receiving \$30 or \$35 a month as wages, half of that would be only \$15 or \$17.50.

At the other end of the scale are the men who receive large wages, or comparatively large wages—over \$100 a month.

Those men, in the main, are the men who have laid aside something in the savings bank. They are the men who, in the main, have got their little homes. Keeping in mind all the time that we have this fund to draw upon, we bring those men down who are best able to stand it to the maximum amount in order to lift up the men who are least able to stand it to the minimum amount.

The result of that is this: Of the men who are injured or killed in the railroad service, 5 per cent of them only are earning more than \$125 a month. Ten per cent of them are earning over \$100 a month and less than \$125 a month. So that 15 per cent of the men in the railroad service who are injured are earning over \$100 a month. Twenty nine per cent of the men who are injured or killed in the railroad service are earning less than \$50 a month. So by this process we bring 15 per cent of the men down to the \$100 limit, or to \$50, upon the one half basis, and we lift 29 per cent up to the minimum of \$25.

The same reason and additional reasons apply to the fixing of the two weeks waiting period. You find such a provision in every law—sometimes greater and sometimes less. Under the German law it is 13 weeks, during which time the expense falls upon the sickness fund.

Under the original English law it was two weeks, but that has been changed, and it is only one week now. The first great reason for making a waiting period is this: The men who are away from their employment by reason of injury for a period of less than two weeks, ranging from two to three, four or five days, and up to two weeks—men who have sustained trivial injuries—would receive but a small amount under the bill, and it would cost, in many of the cases, almost as much to disburse that small amount of money to these men as is represented by the amount itself. But in the aggregate, when you combine all these trivial injuries, it amounts to an enormous sum of money, and it is better to take that sum of money and conserve it for the use of your more serious accidents. That is one of the principal reasons, in my mind, for doing that.

Another very excellent reason is that the trivial injuries are those that are most often simulated. If a man is indisposed and stays away from work a day, the temptation is very strong to remain away two or three days if he can be paid for it. Or, if he has been away for a week the temptation is very great to remain away a little longer; but when you get beyond the two weeks' period it is a more difficult thing for a man to simulate.

So, another reason for fixing a two weeks' period is to cut out a vast number of cases of malingering.

Mr. MOON. But if a man has a serious injury, the two weeks are not taken off in his case?

Senator SUTHERLAND. Oh, no.

Mr. NORRIS. Is that true?

Mr. MOON. Yes. If he is injured seriously the two weeks do not come off.

Mr. NORRIS. It dates from the beginning?

Senator SUTHERLAND. No; but we fix the period. We say that a man for a certain injury shall receive compensation for 72 months. The time begins at the end of the two weeks and continues for 72 months; but during that two weeks the railroad company must pay the charges for medical attention, surgical attention, and hospital charges. We have provided that during the first two weeks the railroad company must bear the entire expense, whatever it amounts to, of all surgical attention, all medical attention, and all hospital charges which, as you can readily see, might run up to several hundred dollars.

Mr. STERLING. That only applies in cases where the injury continues for more than two weeks?

Senator SUTHERLAND. No; that applies in all cases. In every case of injury, no matter how short the period may be, the medical attention, surgical attention, and hospital dues for the first two weeks must be entirely borne by the railroad company.

Mr. STERLING. Even though the injured man is cured within two weeks?

Senator SUTHERLAND. Even though the injured man is cured within two weeks. Then, if the result of the injury continues beyond the two weeks, we still further provide that the railroad company shall continue to furnish medical attention and these other items until the amount paid, after the expiration of the two weeks, shall amount to \$200.

Mr. FLOYD. You say "all expenses." You mean to the amount of \$200?

Senator SUTHERLAND. To the amount of \$200 after the two weeks' period. Within the two weeks they must pay all the expenses, even though they should amount to \$1,000. In addition to that they must pay \$200 more, if it amounts to so much. Usually the provision is that the employer shall pay, as Mr. Sabath very well knows, medical expenses not exceeding one hundred or one hundred and fifty dollars, or something like that.

There is no such liberal provision in any law, as Mr. Sabath very well knows, as the one we have incorporated here.

There is another very good reason why we ought to make this remedy exclusive. One great difficulty in dealing with accidents to-day is that we can not ascertain the truth as to how they happen.

In dealing with accidents it is precisely the same as in dealing with sickness. We all remember how it was in Cuba. Year after year Cuba was decimated by yellow fever. They were unable to check it, unable to do anything about it, because they did not know how yellow fever occurred. But we sent some of our medical men over there. They investigated the subject, carried on a series of experiments, and some of them gave up their lives as courageously and nobly as any soldier ever did upon the field of battle, in order to ascertain what caused that terrible disease.

They did ascertain what caused it. They found it had been caused by a certain kind of mosquito which carried the infected blood of an ill person to a well person, and when they ascertained the truth about it they stopped that disease in the island of Cuba.

We can not do quite as well with these accidents, but when we can ascertain all the truth about them we can go very far in the direction of applying the remedy. The great difficulty in the way of ascertaining the truth about them to-day is that before a man can maintain an action against a railway company he must prove negligence. So that when a man is injured in the course of his employment he at once occupies a position antagonistic to his employer. He is bent upon distorting the facts, upon misrepresenting in some instances the facts, so as to prove negligence against his employer, while the employer is bent upon distorting the facts so as to disprove his negligence. The result is that out of that double distortion of the facts we do not get the truth and we are not able to apply the remedy. The railroad companies themselves are not as able to apply the remedy as they would be if they could get at the truth.

When we pass a law which will say to every man who is injured, "You must receive a certain definite sum of money, no matter how your injury occurs," and to the employer, "You must pay a certain definite sum of money, no matter how the injury occurs, whether due to the carelessness of your employee, due to your own negligence or due to the inherent risk of the industry, you must pay to your employee and he must receive a certain definite sum of money," then we have taken away from them the incentive to distort the facts and we shall be able to get more nearly at the truth and be able much better to apply the remedy and stop these accidents.

Mr. MOON. You have not discussed the legal aspect. I would like you to do that.

Senator SUTHERLAND. In addition to that, it seems to me very clear that such a law as the draft of suggested workers' compensation act would be unconstitutional. A great deal of complaint has been made about the decision of the New York Court of Appeals in the Ives case and yet the law involved in that case was just that kind of a law. That is, it was a law which gave the employee the right to maintain an action for negligence at common law or under the liability statute or to take his compensation, as he pleased, under the compensation law. Such a law as that, it seems to me, might well be said to be arbitrary, and therefore subject to the inhibitions of the due process of law clause, because it is in substance and effect as though you provided that wherever the employer is negligent he shall be liable to an action at law, and compelled to pay such unlimited damages as the jury may assess.

Mr. HARDWICK. That would not violate any constitutional provision, would it?

Senator SUTHERLAND. No; but when you superadd to that the provision that in all cases where the employer is blameless, in all cases where the employee is himself responsible for the accident, in all cases where it is due to the inherent risk of the industry, the master shall in addition pay over this amount, I think there is very grave danger of it being held that that is a taking of the property of the employer without due process of law.

Mr. HARDWICK. Will the Senator permit me to interrupt him there for a moment?

Senator SUTHERLAND. Yes.

Mr. HARDWICK. If, as is the fact, we provide that the traffic shall bear this expense, that the freight and passenger rates shall provide against it, how does it hurt the employer? That is the idea upon which this legislation proceeds.

Senator SUTHERLAND. I do not think that would make the slightest difference.

Mr. HARDWICK. The public would pay it. It would not hurt the employer if you let him charge that much more in his rate.

Senator SUTHERLAND. The fact that the employer may in some way recoup himself by charging more will not prevent, as I understand it, the operation of the due process of law clause. A man might, in any industry, by charging more for his goods recoup himself, but he may not do it.

At any rate, it seems to me that a law of that character would be open to very grave doubt, and I am very strongly of the opinion that it would be utterly unwise, for these considerations and for others, to pass a law which would not be compulsory. I think the law to be wholesome and to be effective, to accomplish what we want to accomplish, must be made compulsory both upon the employer and upon the employee.

I would like to say this before closing: To the extent that you provide in the way suggested by Mr. Hardwick for a law which would allow the employee an election of remedies, you would, as I have already said, broaden the field of opportunity for somebody to bring suit, and you would also broaden this field of waste. You do the same thing when you simply liberalize your employer's liability law. A great many people have argued that the present employer's liability law had better be left alone; that we have liberalized it by taking away from the employer his common-law defenses, and that that is better than this compensation law.

We must bear in mind that however much we liberalize the employers' liability law we simply broaden the field of opportunity for more people to recover damages, and to the extent that we broaden the field of opportunity for the recovery we broaden the field of waste as well.

You never can eliminate in an employers' liability law the element of negligence—you must always have that—and the statistics gathered by the German people and in our own States, particularly Wisconsin and Minnesota, where they have made a very thorough investigation of this subject, show that from 44 to 50 per cent of all cases of injury resulting either in disability or death are due to the inherent risk of the industry. No matter how you may be able to cut down by better methods the total number of accidents which will occur, this percentage of cases due to the inherent risk of the industry

will remain fairly constant, because when you have a vast industry like this to deal with it is governed by the law of averages and not by the doctrine of chance. A single happening of the kind may be said to be due to chance, but when you increase the number to thousands then the whole situation comes under the law of averages.

It is the law of averages that lies at the foundation of our statistics that constitutes the value of our statistics, that enables us, after we have gathered our statistics, to walk sure-footedly in our future dealings, because we can depend upon their remaining fairly constant.

Mr. NORRIS. As I understand you, the statistics show that 44 to 50 per cent—in round numbers, one-half of the injuries——

Senator SUTHERLAND. Yes.

Mr. NORRIS (continuing). Are of such a nature that no recovery can be had under the present law?

Senator SUTHERLAND. They are of such a nature that no recovery can be had under the present law, or under any liability law, no matter how you may liberalize it.

Mr. STERLING. Just in that connection, your first statement was that those injuries due to assumed risk were 44 to 50 per cent?

Senator SUTHERLAND. No.

Mr. STERLING. That was as I understood it.

Senator SUTHERLAND. No; that is not correct.

Mr. MOON. Due to inherent risk, he said.

Senator SUTHERLAND. Due to the inherent risk of the industry, I said; not to the assumed risk.

Mr. MOON. State how many are due to the negligence of the employee.

Senator SUTHERLAND. The German statistics show that more accidents are due to the negligence of the employee than are due to the negligence of the employer.

Mr. MOON. Twenty-five per cent?

Senator SUTHERLAND. Twenty or twenty-five per cent. That however, is probably due in a measure to the operation of the German law. The German law has been in effect for 25 years, and upon an examination of the statistics it is perfectly marvelous to trace, year after year, the way in which the percentage of accidents due to the negligence of the employer has decreased, while the percentage of accidents due to the negligence of the employee has remained about the same. The lesson which it teaches is that a law of this kind makes the employer more careful. It does not have as great a tendency to make the employee careful as it has to make the employer careful, but it has a very great tendency to make the employer more careful.

So if you will trace it through these statistics, it is perfectly obvious that year after year they have been decreasing until the percentage of accidents due to the fault of the employer, in Germany, has decreased, I think, about 16 per cent.

Mr. HARDWICK. Are the German statistics to which you refer railroad statistics or general statistics?

Senator SUTHERLAND. General statistics, including railroad statistics.

Mr. HARDWICK. The railroads in Germany are operated by the Government?

Senator SUTHERLAND. The railroads in Germany are operated by the Government. These are general statistics, but they include the

railroad statistics as well. I spoke of them because I think the Germans gather statistics of this character with greater care than almost any other people in the world.

So what I want to impress upon the committee—and then I will have finished—is that so long as you leave your liability law in operation, no matter how you may liberalize it you will have at least 50 per cent of cases where no recovery can be had at all. This law takes care of those people.

Mr. HOUSTON. Do you mean the present liability law that is in force?

Senator SUTHERLAND. I say that under the present liability law, even more liberalized—even if you were to provide that it should be a defense that the employee was solely responsible; take that away and leave in only the element of inherent risk of the industry, if you can imagine such a law—I can not imagine us passing any such law—the cases due to the inherent risk of the industry alone amount to about 50 per cent, and the can not recover in those cases.

Take this case, for example. Here are two engineers, one in the cab of one engine and the other in the cab of another engine, coming together in a head-on collision. One of them has been guilty of carelessness; one of them has not. Both of them are killed. Each of them leaves a family of a widow and four infant children. Under the present law one of the families might recover ten or fifteen thousand dollars. After perhaps two or three years litigation and after great anxiety a judgment would be rendered, and the widow would be compelled to pay an attorney 40 or 50 per cent of the amount, and bear other expenses; and at the end of all of the litigation she would receive perhaps \$5,000 or \$7,500. But the family of the other engineer could recover nothing. That family must become a charge upon society or a charge upon the brotherhood, or a charge upon some one. This law simply looks at the results. We have been dealing in terms of negligence so long that we can not get away from it. The man who is killed as a result of the inherent risk of the industry, or even as a result of his own carelessness, is just as much killed as if he were killed by reason of the negligence of the railroad company. The need of his family for support is just as great. His family must be supported by somebody in precisely the same way as though he had been killed through the negligence of the railroad company. Now, is it not better to take \$10,000—it would be more under this bill—and give each of these families \$5,000, than it is to give one of the families \$10,000 or \$15,000, to be divided with a lawyer, and the other family nothing at all?

That to my mind is the whole philosophy of this sort of legislation.

STATEMENT OF MR. ARTHUR E. HOLDER, OF WASHINGTON, D. C., MEMBER OF THE LEGISLATIVE COMMITTEE OF THE AMERICAN FEDERATION OF LABOR.

Mr. HOLDER. Mr. Chairman and gentlemen of the committee: My name is Arthur E. Holder. I am a member of the legislative committee of the American Federation of Labor.

I do not want to consume very much of the time of the committee this evening. I have nothing profound to offer—just a few common, everyday observations and a few facts to relate.

I should like to disabuse the minds of the gentlemen of this committee as to the part that any railroad attorneys had in the original influences surrounding the formation of the commission that has reported the Brantley and the Sutherland bills. I believe the relation of those circumstances will be enlightening to the committee.

After the liability law of 1906 was declared unconstitutional by the Supreme Court, one of the honored members of your committee, Mr. Sterling, of Illinois, was active in writing or preparing the bill that was afterwards passed in the year 1908. During the conferences on that bill between Mr. Fuller, who was then representing the railroad organizations, and myself, we recognized the fact that there was a dearth of information upon this great subject; and during the conversations that ensued I think I made the original suggestion that it would be a good thing if we could have a Federal commission appointed in order to make a thorough investigation of the whole subject, and have it prepared in such a way that the Members of Congress would be thoroughly enlightened, and everybody would know exactly what was being asked.

Coincidentally with that, Mr. Sterling introduced a bill that I asked him to introduce, after redrafting it, a bill for compensation for injuries to Government employees. I believe that was the first compensation bill that was ever introduced in the Federal Congress. But about the same time, or very close to it, our honored friend, Mr. Sabath, introduced a bill to cover interstate-commerce employees.

Work proceeded with the consideration of the Federal act that was afterwards passed, the act of 1908; and Mr. Fuller carried to his convention of the trainmen a rough draft of the resolution for a commission. When the Sixty-first Congress convened Mr. Roe and Mr. Wills presented to Mr. Sterling a resolution asking for a Federal commission.

I think it is worth while relating these incidents, so that you will be thoroughly conversant with the original facts, and to show that the request for this commission and this law came from the labor men themselves.

The points for which we are urging the enactment of this law are (1) more safety; (2) peace; (3) education; (4) harmony; (5) universality.

We would, if we could, abolish (and we believe this bill will have a great effect toward abolishing) friction between employees and officials of railroad corporations. It will abolish suspense to the member of the injured employees' families. It will abolish expense, which is a serious consideration. It will have a tendency to abolish a great deal of poverty, and the consequent misery that ensues.

The States that already have enacted compensation laws are New York, New Hampshire, Massachusetts, Rhode Island, California, New Jersey, Ohio, Illinois, Wisconsin, Washington, Michigan, and Kansas. The States that have commissions inquiring into the subject, so far as my latest information goes, are the States of Iowa, Minnesota, West Virginia, Pennsylvania, and Oregon.

I want to present, with your indulgence, a few figures taken from the last yearbook of the Interstate Commerce Commission, in order that you may know from official authority the number of men of the various classes employed by the interstate railroads of the United

States. These figures are taken from statistical table No. 22 of the yearbook for 1910 of the Interstate Commerce Commission, giving by class or occupation the number of employees on the interstate railways of the United States. They do not include the number of employees engaged in intrastate commerce.

Among the general officers there are 5,476; other subordinate officers, 9,392; general office clerks, 76,329; station agents, 37,379; other station men, 153,104; enginemen, 64,691; firemen, 68,321; conductors, 48,682; other trainmen, 136,938; machinists, 55,193; carpenters and carmen, 68,085; other shopmen, such as boiler-makers, blacksmiths, tinsmiths, pipemen, etc., 225,196; section foremen, 44,207; other trackmen, 378,955; switch tenders, crossing tenders, and watchmen, 44,682; telegraph operators and dispatchers, 42,435; employees in the floating equipment department, 10,549; all other employees and laborers not classified, 229,806. This makes a grand total of 1,699,420.

When we take from this grand total the general officers and other officers subordinate to the general officers, a total of 14,868, the engineers, firemen, conductors, and trainmen, which constitute a total of 318,632, or a total of 333,500 persons employed by the railroads who are either members of railroad brotherhoods or officials of the railroads, it leaves a gross number of 1,365,920 who are either members of the American Federation of Labor or eligible to become members in it—almost 80 per cent of the whole. It is for that large number of men that Mr. Gompers spoke to you this morning, and that I in part represent this afternoon.

We should like to add a word of tribute, Mr. Chairman, to the work done by this commission. We have been with it from its inception. We have cooperated with it to the best of our ability. We have seen it progress with its study; and in our experience we have never had the opportunity of observing a commission that did its work more promptly, more thoroughly, and more faithfully.

I think these few words are all that it is necessary for me to say without repeating what others have said. We trust the committee will, in its good judgment, do its best to see that this law as passed by the Senate is passed by the House and becomes enacted during this session of Congress.

ADDITIONAL STATEMENT OF HON. WILLIAM G. BRANTLEY, A REPRESENTATIVE FROM GEORGIA.

Mr. BRANTLEY. Mr. Chairman, with the permission of the committee, there are just a few things I want to say, suggested to me by the rather remarkable presentation of the argument against this bill made by Mr. Coburn on last Saturday. I did not personally hear all that Mr. Coburn said, although I heard a portion of it, and I have since read it as it was printed by the committee. He informed this committee that the pending bill is the work of the railroads and that it was done at a special meeting that was held in Chattanooga in May, 1910, and he further said in his statement:

I will go a step further than that, if you will permit me, and I will say that the railroads are not only favoring this bill but they are the fathers of this bill.

It also appears, Mr. Chairman, that Mr. Coburn sent broadcast throughout the country a letter to various divisions of the Brotherhood of Conductors, in which he makes this statement to them:

I now state emphatically that if you trace the compensation bill to its fountain source you will find it is the work of the railroads, and if they deny it I have the written proof in my possession, and I will publish the whole thing, and I will show the unique underhanded manner in which they set this matter afoot, and I defy the railroads to show that this move did not originate with them right on the heels of the passage of the employers' liability act of 1908, in order to kill the munificent protection it affords railroad employees.

And in this same circular letter Mr. Coburn refers to compensation as "barbarism." In this circular letter he proceeds to inform the conductors that the general expression raised in favor of the compensation bill is that it does away with the fellow servant, assumption of risk, and contributory negligence acts, and then he proceeds to enlighten the conductors of the country by telling them that those defenses have been taken away by the liability law.

He then makes the positive statement in this circular letter in direct contradiction of the plain provisions of the bill that the total permanent disability compensation that is provided for in the bill is confined to the few instances that are cited in the bill, and states in terms that those cases are the only cases in which the injured person shall be paid indemnity the balance of his days.

The entire argument that he made to this committee was summed in one sentence: "We object to the bill in its present form, because it takes away from us the employers' liability act of 1908." He then informed this committee, in answer to a question from Mr. Howland, in these words: "I am opposed to any legislation that takes the place of the employers' liability act." And he further stated, in answer to a direct question from me, speaking, I suppose, for the railroad employees, "We prefer the employers' liability act like it is to-day to any compensation bill you can present."

Now, Mr. Chairman, it is a source of some humiliation to me, in this enlightened age, when compensation has swept the entire civilized world, and when State after State in this Union has adopted it, that there shall come from my State a man (I care not how good a citizen he may be; and, so far as I know, Mr. Coburn is a most excellent citizen and man) to declare that "we prefer lawsuits and litigation under a liability law to any compensation law that you can present."

Mr. Chairman, the two statements that appear as made by Mr. Coburn—the one that this bill is the work and product and scheme in an underhanded manner of the railroads, and the other that litigation is preferable to any compensation—reveal all the earmarks, whether so intended or not, of a purpose and an effort to preserve and perpetuate the damage-suit industry in this country; because when a man wants to preserve and perpetuate that industry, an industry that yields to those who participate in it, according to the facts gathered by the commission, from four to five million dollars every year, the first thing he does, as Mr. Coburn has done, is to seek to increase the friction between the railroad and its employee; to seek to widen the chasm between them; to seek to charge, as he charges, that the railroads in an underhanded manner are trying to take advantage of their employees in this country by forcing this legislation upon them. I am not surprised, Mr. Chairman, when it appears that the man who

makes that sort of argument confesses to this committee, as Mr. Coburn did, that he is not a railroad conductor at all, nor a railroad employee at all, but that he is a practicing lawyer.

Mr. Chairman, the man who makes that sort of a fight on this bill must of necessity go to the extent and be as candid and as open as Mr. Coburn was, and say "I do not want to help you perfect this bill. It is not my purpose in asking for a delay to make it a better bill, but I want you to know"—and he was candid and honest with us when he said it—"that we prefer the present liability law to any compensation law that you can present."

Now, I want to say as a member of the commission that framed this bill that I never heard of the meeting of the claim agents of the railroads referred to until it was announced in the Senate long after our commission had closed its labors. I want to say that no bill from these railroad claim agents was ever submitted to the commission of which I was a member. I want to say that no railroad claim agent ever came before us to insist upon the enactment of this bill or of any compensation bill, and Mr. Chairman, if I can be furnished with the language to make my answer emphatic, I want to say that the statement that the railroads are the fathers of this bill is utterly, absolutely, and entirely untrue, and without a semblance of fact upon which to base it.

I know how this bill was framed. Senator Sutherland has told you. Our commission started with a clean sheet of paper. We spent too many hours, too many days, too many weeks perfecting the language of the sections and paragraphs which should go into the bill for me not to know how it was framed. And I think it is unfortunate that a great piece of constructive legislation, intended and designed to accomplish a great reform, should have injected into the discussion over it the argument and charge that it is nothing but a scheme and an attempt upon the part of the railroads in an underhand way to take from the employees something that they now have.

Mr. Chairman, one would suppose from Mr. Coburn's statement that he is totally uninformed on the subject of compensation. I have assumed that what he has said is due entirely to ignorance upon the subject, rather than that he is here seeking to perpetuate the damage suit industry. One clearly has a right to infer from his circular letter and from the statement made to this committee that he thinks compensation was never heard of until some railroad claim agents met in Chattanooga in May, 1910, and hatched it out as a scheme to get rid of liability for negligence. But I did not know, Mr. Chairman, that a man could confess to that kind of ignorance and at the same time attempt to advise not only the employees of the railroads throughout the country, but this great committee as well. Surely he ought to have read the language of the claim agents that he himself quotes from.

He quotes in part what these railroad claim agents say. He puts it into his speech. What they said, as appears from Mr. Coburn's speech, was that their committee, at one of the several meetings it had held, reached the conclusion, owing to the fact that compensation acts were being considered in many States, and that action probably would be taken on some of them during the winter, that the most effective and efficient way in which they could serve their

association was to prepare a compensation act to be used as a foundation for legislation everywhere. It was not a case of inaugurating a scheme of their own at all; but as they saw the march of events, as they witnessed State after State enacting these laws, they said: "We had better get busy and prepare for the inevitable, and do what we can to make these laws as favorable to our railroad companies as we can."

They did not originate compensation, as I gather from the language Mr. Coburn quotes, but they undertook to meet it the best way they could on behalf of the railroads they represented.

Take the present employers' liability law, Mr. Chairman. Did Mr. Coburn inform these various conductors' divisions of all the facts in connection with it? This committee knows them. Here is a great law, Mr. Chairman, that has been before the Supreme Court of the United States on one, and only one, question. That question was: "Was it within the power of Congress to enact this law?" The Supreme Court has said it was within the power of Congress to enact it, and that is all the Supreme Court has said about it.

What change does the fact that the law has been held constitutional and is now on the statute books effect in the various States and in every State of this Union? I have already read to this committee the language of the Supreme Court of the United States upholding the validity of that law, in which they said that it covers a field of commerce that the States covered before Congress had entered it, but now that Congress has entered that field the law of every State on the subject has been repealed. It has wiped out every State law dealing with accidents to employees on interstate railroads engaged in interstate commerce.

What change does that bring about? Before the law was enacted an employee sued the railroad, and when his case terminated in the supreme court of the State that was the end of it. But all that is now gone. The injured employee to-day can still sue in his own State court, but he sues under a Federal law; and the railroad can take his case from the State supreme court to the Supreme Court of the United States. The Federal liability law as it stands to-day has put it into the power of the railroads of this country to delay and postpone the payment of claims under it for a long period of years. And I want to say to this committee, Mr. Chairman, that I have information that I think is authentic that now, that the law has been held constitutional, the railroads of the country are formulating and have formulated question upon question to be raised in the construction of the law; that they will be raised in every case that is brought that is not settled to suit them; and we are now beginning to enter and will enter upon an era of great and prolonged litigation over these accidents.

That is a thought in connection with the liability law that must appeal to every member of this committee as a condition that exists, but which my friend, Mr. Coburn, who is a lawyer, has not called to the attention of the railroad conductors of this country.

There is another thought that I particularly wanted to bring to the attention of this committee. Speaking for the commission, of which I was a member, I want to say, that I never have been associated with a body of men who strove harder or more diligently or more faithfully or more earnestly than did this commission to do justice to the railroad employees of the country. I want to say to

you that we did not work in ignorance of what the railroad employees of the country wanted or of their condition. We did not undertake to set up our own judgment and our own ideas without consulting them.

Mr. Coburn would have you understand that two great railroad labor organizations—one, the order of conductors, of which Mr. Garrettson is the head; the other, the railway trainmen, of which Mr. Lee is the head—are no longer interested in the passage of this bill. I think it due the commission, and I think it due this committee, that there should go into the record some of the things that were pointedly said to our commission by these men and the way they said it, and who they said they spoke for and represented.

Mr. W. G. Lee, president of the Brotherhood of Railroad Trainmen, who, by the way, informed us that he was then in the seventeenth year of the office of president of this organization, appeared before us at our meeting in Chicago, before we drafted our bill, and said what I am about to read. Please contrast this with the statement of Mr. Coburn, who is a lawyer and not a railroad man.

Mr. Lee said:

I wish to go on record at this time as unqualifiedly favoring a workman's compensation act as a result of resolutions passed by the last two biennial conventions of our organizations. Just what form will be most satisfactory to both employer and employee is a question, but we believe that as far as possible litigation should stop as between the employee and employer. We believe that whatever money is disbursed by the employer should go to those disabled and not a large proportion or percentage to attorneys or others, as is the case at present.

Mr. Lee further said this at the hearing—and I ask the attention of the committee to it, as coming from a man who has studied labor and labor's interests for years, and for 17 years has occupied a position at the head of one of the great labor organizations, and surely is informed about that of which he speaks. Mr. Lee said:

From reports of the Interstate Commerce Commission it will be noted that one of these railroad men is reported killed about every 2 hours and 15 minutes, while 1 is injured about every 7 minutes in the performance of his duty.

What do the railways pay?

He asked.

No one knows; but it is reasonable to say that not more than 10 per cent of injuries and deaths are compensated, and the average amount paid is low.

That was the condition Mr. Lee found: Not 10 per cent of these deaths, one of which is occurring every two hours and fifteen minutes, not 10 per cent of these injuries, one of which is occurring every seven minutes, are compensated for by the railroads.

Mr. Lee appeared before our commission several times, and discussed the various questions involved as we proceeded step by step in the formulation of the bill. Finally the bill itself was perfected and submitted to Mr. Lee, to Mr. Garrettson, to Mr. Stone, and to all the labor leaders, to examine it, and then come before us and tell us what they thought of the bill that we had finally drafted.

On December 20, 1911, there appeared before our commission Mr. G. H. Sines, the vice president of the Brotherhood of Railroad Trainmen; and he made this statement to us:

It might be well for me to say to you that I am here by request of President Lee, of the Brotherhood of Trainmen, to represent him. I am one of the vice presidents of that organization. He is unable to attend on account of sickness.

Mr. Sines then further said:

I want to say to you, gentlemen, that from the standpoint of my organization, although we believe and feel that the provision, in so far as it covers the number of years, should be extended, it will have the support of my organization as an organization.

Mr. Sines further said to the commission:

I want to say to you that from our standpoint we would be very much opposed to the reduction of the term of years, as has been called to your attention, and suggestions made along that line. We believe that the term should be extended; but, however, I want to say to you that your tentative proposition as it is will be supported by my organization when it finally gets before the Congress.

Mr. Lee, the president of this brotherhood, himself came before the Judiciary Committee after the bill had been introduced. Mr. Lee said to this committee on March 26, 1911, as follows:

To go back to the convention of May, 1910, held at Harrisburg, Pa., at which the convention again went on record in favor of this or a similarly proposed law, our convention first passed on this question in a strong resolution in 1905, and again at the biennial convention of 1907, and again in 1909, and again in 1911. As the representative of those men, conforming to the constitution and by-laws of the organization, to which all of these men who are members must subscribe, I have appeared before the Federal commission and said to them: "We are in hearty accord with you, and while the amounts specified in the bill as you have drafted it are not as high as we believe they should be, the principle of the bill, as we understand it, is right, and we wish you to do everything in your power to have it enacted, because we are paying in excess of \$200,000 per month for deaths and disabilities in this one organization. We are paying, in round numbers, over \$2,000,000 to a class of men a large per cent of whom do not receive a dollar to-day from their employers as the result of their injury, and their beneficiaries receive nothing as the result of death."

Mr. Lee further went on to say to this committee why he was here, and how. He said:

I am here speaking for the organization in its entirety.

The committee will remember that Mr. Lee, at this meeting, read a paper written by himself, replying, paragraph by paragraph, to a criticism of this bill as it appeared in the Raleigh News and Observer of March 7, 1912. Mr. Lee told this committee:

So far as the members of these organizations not being permitted to come here and appear before you—as far as that is concerned, some thirty-five or more general chairmen of the conductors and trainmen appeared before the Federal Commission at the request of myself and Mr. Garrettson.

Mr. Lee further said to this committee:

My advice from the reports of the representatives of those organizations as chairman in the various hearings, etc., is that the American Federation of Labor, the Order of Railroad Conductors, the Brotherhood of Locomotive Engineers, and the Brotherhood of Railroad Trainmen have all declared in favor of and are supporting the workman's compensation. All of them are agreed that the amounts are not quite right.

Mr. HARDWICK. What was the date of that testimony?

Mr. BRANTLEY. Last March—March 26.

Mr. HARDWICK. March of this year?

Mr. BRANTLEY. Yes. He further said—and contrast this with the statement of Mr. Coburn:

We are in favor of this bill as against anything else that has been proposed.

Mr. Garrettson, president of the Order of Railway Conductors, appeared before our commission time after time. He was at first

skeptical of several features of the commission's proposal; but at a hearing even then, on November 6, 1911, he used these words:

Personally, I am an absolute believer in a compensation law as contrasted with a liability law.

Then, at a hearing before the commission on December 20, 1911, after the commission's bill had been completed and submitted for discussion, and read and discussed by Mr. Garrettson and by all the representatives of labor, Mr. Garrettson said this to us:

I have presented to you, first, my allegiance to the commission, and with it goes the allegiance of the organization which I represent.

He further said:

The only thing left is this: To answer any questions that anybody may desire to ask, and to again assure the commission that their service in the preparation of this bill and the service they have given throughout in getting it to the stage in which it now is, is appreciated by the men benefited thereby.

At the same time, in answer to a question from Senator Chamberlain, asking Mr. Garrettson's cooperation in getting the bill through Congress, Mr. Garrettson said:

In this case with my allegiance also goes my support.

He further said to our commission:

I think the bill is peculiarly well framed to meet the wide scope that will come between the highest-paid man in any service and the lowest-paid man that may serve any employer. Consequently, the only thing we have to quarrel with is the time, the percentage of wage, and the allowances for the various things. I can say this for these three organizations: That every consistent aid that can be given in enacting into law the findings of this commission will be given, and I believe I am justified in saying for all three that you can have the best that they can furnish.

Mr. CARLIN. What three organizations were those, Mr. Brantley?

Mr. BRANTLEY. The conductors, the trainmen, and the engineers.

At a hearing before this committee on March 26, 1911, Mr. Garrettson appeared, and, among other things, said this to the committee (mark the contrast between this and the statement of Mr. Coburn that a liability law is preferable to any compensation law):

It is almost universally believed among laboring men in general that their salvation lies in the direction of the compensation theory. I can say to you that I give full and complete indorsement as a representative of those men to the present bill, not because I agree with every one of its provisions. I call your attention to the fact that there are things in there that I have striven to have modified and extended, and that it did not measure up to my belief in many directions, but I was an absolute indorser of the principle, and further, because of the fact that the interest and effort that had been shown by this commission was such that it merited the support of every man who honestly believed in the application of the principle.

Mr. Garrettson further told this committee:

I want to say this now, as I have said before the national commission: The act as a whole has my absolute support, and I approve it on behalf of the men I represent.

That was on March 26 last.

Mr. Warren S. Stone——

Mr. HARDWICK. Before you leave that, are you aware that in May of this year both of these gentlemen modified their position?

Mr. BRANTLEY. I heard what Mr. Coburn said. He read some letters here last Saturday; and I am informing the committee of the real attitude of Mr. Garrettson and Mr. Lee and the reasons given by them

for their position. No man can gainsay or deny either their position or reasons.

Mr. Warren S. Stone, president of the Brotherhood of Locomotive Engineers, appeared before this commission in December, 1911, after the bill of the commission had been completed and discussed. Among other things, Mr. Stone said this:

Speaking as the chief executive of the engineers, I want to say that your bill is going to have the support of the Brotherhood of Locomotive Engineers. We are going to do everything we can to have it enacted into law.

And Mr. Stone is a wise man, for he added:

But there has got to be a campaign of education.

Men like my brother Coburn have got to be informed as to what compensation is.

Mr. Stone further said to the commission:

Gentlemen, I want to say to you that the bill is even broader in many lines than I ever expected we would be able to get, and I think an expression of the thanks of the employees of this country is due to this commission for the broad and liberal spirit in which it has met the various interests and combined them in the tentative draft of this bill. But I also feel that the majority of the men throughout the country never will know one-half of the labor that was necessary on the part of you gentlemen.

While Mr. Stone was speaking, Judge Moon, a member of the commission, said this to him:

The laboring men of this country can not fail to realize, when they study it, that this commission has not only given exhaustive attention to it, but that they have been actuated by a desire to be fair to the laboring men of this country.

Mr. Stone replied to that statement as follows:

If they study it, they can not fail to see it. I want to thank you gentlemen for the exhaustive study and the work which you have put in on this bill, and I assure you that we will do everything possible on our part to have it enacted into law.

At a meeting of this committee, on March 26, you gentlemen will remember that while Mr. Stone was not present, there was read a telegram from him to this committee, which was as follows:

NEW YORK, *March 26, 1912.*

H. E. WILLS,
Congress Hotel, Washington, D. C.:

Impossible for me to be present at hearing on workman's compensation to-day. This will authorize you to give the proposed bill my indorsement in the strongest possible terms. I consider this the most important legislation that has come up in years and every energy should be used to have it become a law.

W. S. STONE.

I notice, Mr. Chairman, that Mr. Coburn, who has stirred up all the opposition he could to this bill, has presented several letters from various parties. I was struck with one of them that I should like to call your attention to for just a moment, where one of the writers predicted that the position of Mr. Stone would cause him trouble when the Brotherhood of Locomotive Engineers met. That letter is in the record. You gentlemen can find it. One of these writers predicted that Mr. Stone would encounter trouble when the Brotherhood of Locomotive Engineers met.

The CHAIRMAN. Judge Brantley, I suggest that you find it after you have concluded your remarks, and let the stenographer put it in at this point.

Mr. BRANTLEY. I simply wanted to say that my information is that when the Brotherhood of Locomotive Engineers met, and some opposition was expressed to this bill among some of the men, particularly from some of the Southern States, Mr. Stone said to the members that favored this legislation: "This legislation is right, and we will fight for it, and if we lose I am perfectly willing to go down in defense of that which is to the interest of the engineers of this country." And his convention, so far from turning him down, as you learned here this morning from a member of his organization, Mr. Hoskins, who addressed you, by an almost unanimous vote indorsed the bill. And I do not know that I am violating any secret when I tell you that this great convention, in addition to that, reelected Mr. Stone as its grand chief by an overwhelming majority; and, not satisfied with that, they increased his compensation from seven to ten thousand dollars per year.

I have found the letter to which I refer, Mr. Chairman. It is from the Fond du Lac division of Wisconsin. It is addressed to Mr. Coburn at Atlanta, and this statement is made in it:

I predict trouble for Mr. Stone, chief of the engineers, in the convention now being held in Harrisburg, Pa., unless he backs up from the position he took in recommending this new bill. It is a harder slap at the engineers than it is for the conductors. Just think—\$50 basis for men making \$200 and more.

That is signed: "E. Sweeney, C. C. Division, 259."

We have already seen, Mr. Chairman, that Mr. Sweeney was a very poor prophet about Mr. Stone.

I want to call your attention to another letter that is furnished here as an argument against this bill, that comes from the Nicolls division of the Order of Railway Conductors, at Reading, Pa. It is signed by W. W. Eisenhauer. Like all these others, it acknowledges the receipt of the appeal from Atlanta:

Your letter of April 19 at hand. Read in open division this date. Could take no action on account of not having the official seal attached; but, for your information, we up here do not put much credence in said bill, as it eventually will break up the labor organizations. The younger men taken in the service in case said bill would pass would not enroll in any labor organization, as no doubt they would be satisfied with the compulsory compensation. My personal wish is that said bill will never pass, as it is detrimental and inadequate.

I do not know whether the opposition to the bill consider that an argument against the fairness of the bill or not. To argue that the new men coming into the service of the railroads will find the compensation under the bill so liberal that they will be satisfied with it and will not care to join any labor organization is scarcely an argument against the liberality of the schedule of compensation proposed.

I want to suggest a thought just here that I think is well worthy of the consideration not only of this committee, but of these gentlemen who represent and are interested in the labor organizations of the country. I think you gentlemen of the committee can fully understand, after hearing the things said to our commission by the various representatives of organized labor—Mr. Lee, Mr. Garrettson, Mr. Sines, Mr. Shephardson, the vice president of the conductors; Mr. Stone, and a great many others, including Mr. Wills, the legislative representative of several organizations—that when our commission reported the bill they thought they were reporting a bill that had the

substantial, hearty, and enthusiastic support of the labor of this country. Such opposition as we anticipated to the bill we expected would come from other than labor sources.

Mr. CARLIN. May I ask you a question right there?

Mr. BRANTLEY. Certainly.

Mr. CARLIN. Who is the chief executive officer of the firemen's association?

Mr. BRANTLEY. Mr. Carter.

Mr. CARLIN. What is his attitude with reference to this bill?

Mr. BRANTLEY. The last time it was expressed within my knowledge was the statement that the general attorney of the firemen, Mr. Dixon, made to this committee on March 26—that while Mr. Carter had been opposed to this bill, he had decided to become neutral, and to take no action either for it or against it.

That is the last I have known of Mr. Carter's position.

Mr. STERLING. Where does he live?

Mr. BRANTLEY. I really do not know. Where does he live [turning to Mr. Teat]?

Mr. TEAT. In Peoria, Ill.

Mr. BRANTLEY. I understand he lives in Peoria, Ill.

Here, then, is the situation, Mr. Chairman: Mr. Lee said he spoke for his organization. Mr. Garrettson said he spoke for his organization. If it be a fact that Mr. Garrettson and Mr. Lee simply spoke each for himself, I want to know who will be hereafter heard or listened to by this committee or by Congress to speak for organized labor. If we have reached the point where the executive heads and the legislative councils of these labor organizations can not speak for their organizations, who can speak for them?

What is to become of the power of these organizations if their executive heads and legislative councils are to be discredited as not entitled to voice the sentiment or the wishes or the desires of the organizations to which they belong, and to the head of which they have been called?

Organized labor is involved in this situation. Its power is involved. Its usefulness is involved. It is a subject that is worthy the consideration, not only of this committee, but of these gentlemen who come here and assume to speak for labor, and who by their acts seek to discredit the executive heads of their organizations.

The only opposition of any seeming magnitude that has been manifested to this legislation has come from my section of the country. It has come from the South. You heard Mr. Holder give just now a list of all the States of the Union that have compensation legislation, and of all the States that have commissions studying compensation legislation; and he did not read the name of one from the South.

Mr. Chairman, our people are just as patriotic, just as liberal, just as earnestly and honestly desirous of doing what is right as the people of any State in this Union. But it so happens, in the progress of events, that compensation legislation, or the compensation principle, has not reached our people for discussion and action and real consideration. So, when gentlemen like our friend Mr. Coburn go before the labor organizations of the South and make the statements to them that he makes in this circular letter of his, and the

other side is not presented, and the men are uninformed about compensation, what else could you expect except for him to create, as the result of a campaign, a certain amount of opposition among those people?

I would be willing to stake my political life and fortunes upon the proposition that the railroad labor organizations of Georgia and of every other Southern State, whenever the real truth and the real merits of this beneficent legislation reach them, will be just as enthusiastically in support of it as organized labor is elsewhere, where compensation is a fact.

Mr. Coburn, for instance, says to these people: "Look how they are trying to deceive you. They are representing to you that compensation legislation is going to do away with the common-law defenses of the railroads; it is going to strip the railroads of the power to interpose the defense of fellow servant and assumption of risk and contributory negligence." And then he says: "I will expose this underhanded dastardly attempt to impose upon your ignorance. I will tell you that those common-law defenses have been already knocked out from under the railroads by the employers' liability law."

There is not a man in the United States, Mr. Chairman, who knows anything about compensation, who ever made any such statement about what compensation does as Mr. Coburn states they claim.

What does compensation do, and what is the only thing it does do?

I was here when the first employers' liability law was reported out of this committee in 1906. I was here on this committee when the second one was reported out. I was here when both were enacted by Congress. They did practically take away from the railroads their common-law defenses, the fellow-servant doctrine, the assumption of risk, and contributory negligence. But they still left to the railroads the right to defend by saying they were not negligent. All in the world compensation does is to take the one further step, and strip the railroad of the power to defend by saying or proving that it was not negligent.

That is what compensation does, and all that it does. It completes the stripping of defense from the railroad company where it injures one of its employees. Under it the railroad has no defense. And when that is done, Mr. Chairman——

The CHAIRMAN. Then the only question left is what would be just recompense for the injury done the employee?

Mr. BRANTLEY. Absolutely the only thing that is then left involved is the schedule of compensation.

Must there be a limit to it? We thought so. As our limit, we nearly doubled what the railroads to-day pay. Then came the question of distribution. Who shall get this money, and how shall it be divided up? These gentlemen who are fighting us are coming here with no helpful suggestions whatever. They do not say how our distribution can be improved upon. They make no proposals to make the bill a better bill. But, in the language of Mr. Coburn, they come here saying: "We prefer litigation under the liability law to any compensation law that you can prepare."

That is the situation.

I must call attention, Mr. Chairman, to a further statement made by Mr. Coburn. He goes beyond even the assertion that he prefers the liability law to compensation. I asked him this question:

Is it your idea that the great army of injured railroad employees who can not prove negligence should not be provided for?

He says:

We do not ask that. * * * We do not ask anything for the men who are injured through their own carelessness, where the railroad company is not at fault.

Mr. Davis suggested:

Or where they are unable to prove fault?

And Mr. Coburn said:

Or where they are unable to prove fault.

In this enlightened age, Mr. Chairman, where we are seeking to protect society as well as the injured people themselves by putting the economic loss of these injuries upon the industry that produces them, Mr. Coburn says:

No; that is barbarous. Let us pay only those who, at the end of a lawsuit, can make a case against the railroad company; and let all the others continue their suffering and their want and their misery. We do not want anything for them.

Mr. Chairman, I lay down the proposition that the barbarism is in the present system. I say any system of law or government is inhuman that says to the great army of railroad employees in this country—and there are 1,700,000 of them—"If you are injured, or if you are killed, this great industry that you serve does not owe you anything unless you can 'law' it out of it at the end of protracted litigation." That is inhuman, Mr. Chairman; that is barbarous. And so the civilized world has discovered and declared. We are the last of the great nations of the earth to propose to get away from that barbarism, and to say to each industry: "You shall carry the burden, the economic loss, of the accidents that result from the operations of your industry."

The commission, to be brief, did not enlarge the scope of this bill to go beyond interstate railroad employees, because we regarded this movement as so tremendously important that we could not afford to take any chances of having a backset by getting into the bill some class of employees as to whom there was a question about the power of Congress to legislate. We did know that as to the employees of the railroads engaged in interstate commerce the Supreme Court had said that Congress had jurisdiction; and it was our thought, in our first compensation bill, to provide for that class, where the right seemed to us to be clear. Our idea was that by providing for them we would establish the principle, and the other classes could in due season come in with laws to take care of them.

We realize, and you gentlemen realize, that you can not inaugurate any great reform without a fight for it. The fight that is being made on this bill does not surprise me. There never has been any great reform that did not come as the result of a fight. But this committee has all the facts before it, and knows which is the side of justice, of right, of humanity—which is the side that proposes a great justice that has been long delayed.

Just one more thought, Mr. Chairman: To me as a lawyer the proposition is so simple that of course it seems to me as though every-

body should grasp it just as I think I grasp it. My judgment, of course, may be at fault, and that of other men may be correct. I do not claim to be infallible, nor to have any better judgment than anybody else. But upon the question of making this law an elective one, let me submit in conclusion just one thought:

Suppose Congress should pass a law saying that every railroad company in this country engaged in interstate commerce should, on the first day of next August, make a payment to each one of its employees of a thousand dollars, and stop with that: Would that be within the power of Congress? Would not that be clearly the taking of the property of the railroad and giving it to the employee without due process of law? Would the fact that Congress declared it constitute due process of law? Surely not. No lawyer could argue that or claim that.

Then, Mr. Chairman, is it not an exactly similar proposition if Congress, finding upon the statute books a liability law for negligence, leaves it standing, and then says that in all other cases where the railroad company has committed no fault, has committed no negligence, has committed no breach of duty, and has entered into no contract to pay, it shall pay a fixed, arbitrary amount, with nothing to offset it—nothing in the way of a regulation of commerce. Will not this be a pure, arbitrary taking of the property of A and giving it to B without due process of law?

To my mind the question is not debatable. Congress has no power to do it.

The CHAIRMAN. Your idea, Judge Brantley, is that if it is a uniform regulation it will keep the bill from being obnoxious to the provision requiring all rights or remedies under the law to be in conformity with the due-process clause of the Constitution?

Mr. BRANTLEY. We must provide a regulation of commerce that is reasonable. That has been held. If it is to be valid, it must be reasonable; it must be a scheme of regulation in which there are mutual benefits. That is the only theory upon which the commission ever concluded that it could enact the legislation at all.

The CHAIRMAN. And it must be a uniform regulation?

Mr. BRANTLEY. Yes; and it must really be a regulation that is reasonable.

Mr. HARDWICK. Mr. Chairman, if my colleague will permit me, why will not that same argument apply—this “due process of law” argument—every time you take away a defense from a railroad engaged in interstate commerce? Why is it not just as sound and just as strong when we pass these liability bills?

Mr. BRANTLEY. Oh, that is a different proposition; no man has a vested right in a rule of law, and if my friend, Mr. Hardwick, will do me the honor—

Mr. HARDWICK. But if it were a uniform regulation, applicable to all the railroads, your idea would still obtain in that view of the case?

Mr. BRANTLEY. I was not stressing uniformity, but I was stressing the fact that when you leave the liability law standing and then supplement it with the compensation law, you are not proposing a regulation of commerce that is reasonable in form and that gives mutual benefits to both classes; but you are doing this: You are saying to the railroad company: “If you are negligent, then you shall be sued, and you shall pay whatever judgment a jury may assess you. If you

are successful in defending the suit and proving that you are guilty of no negligence, and therefore are not liable for any breach of duty or contract, then at the end of winning your suit you must arbitrarily pay the fixed amount anyhow."

Mr. CARLIN. Mr. Brantley, if you left it optional, would you not be in effect delegating to the individual a power which the Constitution requires Congress itself to exercise?

Mr. BRANTLEY. Oh, unquestionably. I think Senator Sutherland made that absolutely clear. That is in relation to making the law compulsory. I was dwelling just now on the other end of it, in reference to the "due process" clause of the Constitution as relating to the proposal that the law shall be exclusive.

But, Mr. Chairman, if there were no constitutional question involved, on the simple merits of the proposition, there would be neither reason, justice, right, nor benefit in making an elective law, because the very thing that we seek to accomplish by compensation would not be accomplished. You would have the same line-up of one side against the other, the same friction between the railroad and the employee, the same damage-suit lawyer going to the man whenever he was hurt and saying: "Don't take compensation; you have a case for damages." You will find the same attorneys for the railroads employed, with no reduction in their expenses. You would have the same economic waste and you would find the same obscurity in undertaking to locate the cause of accidents. Why, Mr. Chairman, compensation would be an absolute failure—it would be worthless—if we undertook to put in the form suggested.

Senator Sutherland suggests, although I think I mentioned it—I am quite sure I did, when I was before this committee on a prior occasion—that in holding that Congress had any power at all over this subject, we proceeded a good deal on the principle that was laid down by the Supreme Court in the Oklahoma Bank cases. There the State law required the guaranty of bank deposits; and here was a bank that had not lost any money to its depositors, which was taxed in order to make up a loss that had occurred in some other bank; and it said that that was taking its property without due process of law. But the Supreme Court held that the taking of its property was justifiable, by reason of the mutual benefits and advantages that accrued to all the banks. It is only on that theory, so far as I know, that we can justify a law that takes the property of one man and gives it to another, in the absence of any contract or agreement to pay it, in the absence of any dereliction of duty, and in the absence of failure to comply with any law.

The Court of Appeals of the State of New York held in the Ives case that the New York law, framed exactly on that principle of election, was unconstitutional upon the very ground I have suggested. That is the ground they put it on.

Of course, with us I think we have a little different situation, because we are proceeding under the commerce clause. If we can make out of this proposed law a regulation of commerce that is reasonable (and the Supreme Court has many, many times laid down the test of reasonableness); if we can show that under this regulation, while it does take the property of the railroad and give it to the employee arbitrarily, it offsets that in a measure by relieving the rail-

road company of the litigation that results under negligence liability, we will be within the Constitution.

Mr. FLOYD. Judge Brantley, just there I should like to ask you a question on one point. I follow you and Senator Sutherland on most of your propositions, but I want to submit to you the same question that I put to him.

Suppose we make this law absolutely positive so far as the railroad companies are concerned and leave the employers' liability law in force and make the remedy elective at the option of the employee only. In what way would that affect the constitutionality of the act? How would making the remedy elective affect the constitutionality of the law? The employers' liability act has been already held constitutional and has been sustained by the Supreme Court. Now, suppose we pass a law that allows the injured railroad employee, at his option, to choose either the remedy provided for in the employers' liability act or the remedy provided under the terms of this act?

I am utterly unable to comprehend or follow your argument to the effect that that would render this law unconstitutional. I understand your objections to it on the ground of policy, but wherein would that make the law unconstitutional?

Mr. BRANTLEY. Mr. Chairman, my brother Floyd and myself are in this unfortunate condition. I had just said that in my judgment the proposition that such a law as he proposes would be unconstitutional is so elementary that I was unable to see how anybody could look at it from the other side. He is equally as positive that the proposition that it would be constitutional is so elementary that he can not see how anybody could look at it from any other standpoint.

Mr. FLOYD. I understand your declaration, but I am asking some reason for it; because, as you say, it is just as incomprehensible to me that it would not be constitutional as it seems to be to you that it is unconstitutional. I am asking you the reason why you think it would be unconstitutional.

Mr. BRANTLEY. Mr. Floyd, the entire burden of all that I have said on the subject of constitutionality was devoted to answering that one question. I started with the illustration that if Congress passed a law saying that on the 1st day of August every interstate railroad should give to each of its employees a thousand dollars, would that be a valid law? Would the fact that Congress enacted it and declared it constitute "due process"? That sort of a law would be clearly in the teeth of the Constitution.

Mr. NORRIS. Mr. Brantley, will you permit a suggestion there?

Mr. BRANTLEY. Yes.

Mr. NORRIS. Your illustration of the bank-guaranty law, it seems to me, illustrates the proposition in answer to Brother Floyd's question. In that case it was admitted that they took the property of A and gave it to B, but A had some recompense, because in the business he had a benefit from that guaranty. In this case, if you do not make it elective, if you pass this law just as it is now, you take some property from A and give it to B, but you compensate A by the benefits that he will receive in several respects that might be mentioned. If, however, you make it elective, you take property from A and give it to B without taking away from A the burden of all this

litigation, and compel him to pay the big damages for the high-priced men, while still putting upon him the burden of paying the low-priced men under the compensation act.

Mr. BRANTLEY. Precisely.

Mr. NORRIS. In other words, it seems to me in that case you would be taking away from A and giving to B without giving A any compensation for the loss.

Mr. BRANTLEY. That is it. It would be simply the arbitrary taking of the property of A and giving it to B.

Mr. FLOYD. But the law would be uniform, and the man that did not have any cause of action might go into court and lose.

Mr. BRANTLEY. But, Mr. Floyd, a law saying that every employee of every interstate railroad should be paid \$1,000 by the railroad on the 1st day of August would be a uniform law.

Mr. FLOYD. That would be a different proposition altogether.

Senator SUTHERLAND. Mr. Floyd, in the Noble Bank case the court expressly said that the compensation to the banks which were compelled to give up a certain amount of money for the benefit of a failing bank consisted in the mutuality of the general plan. That is exactly what happens here. This law says to the railroad company: "In some cases, it is true, you will be compelled to pay money to an injured employee without your fault; but the compensation for that consists in the fact that you are relieved from the liability to pay unlimited damages in cases where you are at fault."

Mr. NORRIS. That is right.

Senator SUTHERLAND. The plan is exactly mutual.

Mr. GRAHAM. Just there, Senator, there is a difficulty that arises, and it grows out of the judge's own statement of the facts: The proposed plan will increase the total amount of money paid out by the railroads by \$40,000,000 a year. You start with that concession. Now, how do you equalize for that on your present theory?

Senator SUTHERLAND. It would be about \$8,000,000. I do not think, however, you can balance the question in terms of dollars and cents. The plan is a mutual plan.

Mr. GRAHAM. Yes.

Senator SUTHERLAND. The plan says to the railroad company: "You are compelled under this law to pay in certain cases where you are not in any manner at fault; but as compensation for that this general plan relieves you from paying the unlimited amounts in cases where your negligence can be shown." The plan itself is mutual.

Mr. NORRIS. And it relieves them of a lot of litigation.

Senator SUTHERLAND. Yes; it relieves them of a lot of litigation. It relieves both sides.

Mr. GRAHAM. I can see at once the injustice of passing a law and making it elective in such a way that, as the old political saying had it, the railroad company would "catch it coming and going." That would not be right.

Senator SUTHERLAND. That would be arbitrary.

Mr. GRAHAM. A law that would fix it so that the man who had a clear case for damages could stick to the old remedy, and the man who had no claim for damages under the old law could get them under the new one, would not be just at all.

Senator SUTHERLAND. As has been repeatedly held, the courts will look at the substance of the law, and not at the form. The substance

of this elective law would be precisely the same as though we said nothing about the negligence law, but simply left that, and provided in express terms: "In every case where the railroad company is not at fault and in every case where the employee is solely at fault he shall nevertheless recover a certain definite sum of money." That, as I view it, would amount to a naked taking of the property of the railroad company and giving it to the employee. But you relieve it from that feature when you relieve the railroad company from an extreme liability in another direction; and that is the whole plan.

Mr. GRAHAM. By injecting a compensatory clause on the other side.

Mr. NORRIS. I should like to ask you, Mr. Brantley, whether the commission have any statistics in regard to how much of the compensation that the railroads pay to their attorneys is composed of compensation to attorneys for defending them from damage suits?

Mr. BRANTLEY. We have no statistics at all on that subject.

Mr. NORRIS. There is not any doubt, of course, that there is quite an item there.

Mr. BRANTLEY. There would be quite a saving to the railroads in that particular, and a great saving, of course, in the expenses of defending these suits—the time of railroad employees, etc., attending court as witnesses.

Mr. NORRIS. Oh, yes; there is a great deal of expense outside of the compensation of the attorney employed.

Mr. BRANTLEY. Yes; there is a great expense.

I want to say to Mr. Floyd that we had some of the brightest lawyers in this country argue this matter to us. One of the brightest lawyers in my State, I think, wrote me a personal letter, in which he said:

The fundamental difficulty with a compensation law is that you are proposing to arbitrarily say, by legislative decree, that the property of A shall be given to B when A has committed no fault and entered into no contract to pay.

He said, "You can not do it." In the Oklahoma Bank cases, where the bank protested against paying its tax to go into the general fund to protect a guaranty of bank deposits, and said, "You are arbitrarily taking my money in order to help some other fellow," the Supreme Court held that that was an arbitrary taking without process of law, but that it was justified and defensible by reason of the mutuality of the beneficial arrangement. There was a compensation to the bank that paid this money.

Our commission heard much learned argument against our power to enact this legislation at all. As Senator Sutherland told you, there was but one lawyer representing the railroads who said we could do it. The others came saying it was beyond the power of Congress. But we worked out a scheme that we could do it in the very way we propose, by making a regulation of commerce under which, while we would take arbitrarily the property of A and give it to B, we would compensate A by relieving him from certain liabilities, obligations, and responsibilities that he otherwise would be under, and we believed that constituted a reasonable regulation of commerce.

Mr. FLOYD. But do you take the property of A and give it to B?

Mr. BRANTLEY. Why do we not?

Mr. FLOYD. Each one of them has a cause of action against the railroad company.

Mr. BRANTLEY. I am talking about the cases where the employee has no cause of action. Here is a man who has no cause of action, and our bill pays him.

Mr. FLOYD. You provide in this compensation bill for a new remedy. That is, you give relief to a man who has no cause of action under existing law.

Mr. BRANTLEY. And who could not have.

Mr. FLOYD. But you can enlarge or diminish those causes of action by statutory regulation. Do you not think it is within the power of Congress to repeal the employers' liability act without providing anything in its stead?

Mr. BRANTLEY. That may be; but every power that is granted to Congress by one clause of the Constitution is limited by another clause. Here is the commerce clause, that gives us a seemingly broad and unlimited power to regulate commerce between the States. If no more appeared, we could make any kind of regulation we pleased—we could make the kind you suggest. But added to that is the fifth amendment to the Constitution, which says that Congress can not take the property of A and give it to B without due process of law. That is a limitation upon the power granted under the commerce clause, and we can not get away from it.

Mr. FLOYD. If we were to amend this bill by making it optional——

Mr. BRANTLEY. In the way you suggest?

Mr. FLOYD (continuing). In the way I suggest, it would still leave in force the employers' liability act, would it not? And then the constitutionality of this new bill would be the only matter that would be involved, would it not?

Mr. BRANTLEY. I think perhaps that would be true. But, as Mr. Graham said, the situation would be so utterly and outrageously unjust and inequitable and unfair that even if no constitutional question were involved, we could not afford to do it.

Mr. FLOYD. Why would it be unjust? The employee who sought a remedy under the compensation act would not be allowed to seek at the same time a remedy in the courts. Why not leave it optional for the employee to seek a remedy either in one or the other tribunal, but not in both? I concede it would be manifestly unjust to give him the two remedies.

Mr. BRANTLEY. We are all differently constituted, and what seems just to one man often seems unjust to another. But a regulation under which the man who had a cause of action could get an unlimited amount, and the man who had no cause of action would get an arbitrary amount, would accomplish absolutely nothing in the way of reform, but would be absolutely unjust, from my viewpoint.

Mr. FLOYD. To whom?

Mr. BRANTLEY. To the railroad and to justice.

Mr. FLOYD. My objection to this bill is that I think it would be unjust to the employee. I think it would be unjust to him to cut off the remedies he now enjoys and make this a compulsory remedy and his sole remedy.

Mr. BRANTLEY. As against your judgment, to which you are perfectly entitled, I appeal to the judgment of these men who belong to the labor organizations, who have given their lives to the betterment of labor—men like Mr. Stone, men like Mr. Garrettson, Mr.

Lee, Mr. Wills, Mr. Gompers, and Mr. Holder. They say this is a proper bill, and I put their judgment against yours.

Mr. FLOYD. Yes; but I have received petition after petition and protest after protest from the heads of the labor organizations in my State, urging me to oppose this bill on the ground that it is unjust to them.

Mr. BRANTLEY. Based upon the misrepresentations of this bill sent out by our friend Mr. Coburn.

Mr. FLOYD. I do not concede anything of the kind.

Mr. BRANTLEY. Every protest he filed is predicated upon his own representations of the bill.

Mr. FLOYD. These people make no reference to him and if they ever heard of him I do not know it.

Mr. COBURN. What were the dates of those protests?

Mr. FLOYD. My letters are dated since the passage of this bill through the Senate. One of them explains that the presidents of their organizations had forbidden them to make any protest against this legislation until on the day that the bill passed the Senate, and that on the day the bill passed the Senate the presidents of their organizations released them and gave them an opportunity to express their views upon the question.

Mr. BRANTLEY. What organization was that?

Mr. FLOYD. The conductors, I think, and the firemen and engineers.

Senator SUTHERLAND. Mr. Floyd, before you pass from that subject, may I suggest very briefly another view of this matter?

Mr. FLOYD. Certainly; I shall be glad to hear you, Senator.

Senator SUTHERLAND. I think some confusion arises from the fact that most of us are thinking about the man who has been already injured, and who at the time we are thinking about him has or has not a case against the railroad company.

Mr. FLOYD. No; I have nothing of that kind in mind, because the bill expressly exempts them.

Senator SUTHERLAND. Let me finish my illustration. Now, that is not the case. We are dealing altogether with future cases. For example, we say by this law to a brakeman who is earning \$100 a month: "Within the next year it is certain that you are going to be injured; but it is altogether uncertain as to whether or not you will be injured under such circumstances that you can prove negligence against your employer, and recover at the hands of a jury an unlimited amount of damages or whether you will be injured under such circumstances that you can recover nothing. Now, in advance of all that, we say to you and we say to the railroad company: 'We will settle this thing in advance by saying to the railroad company that, no matter how the accident happens, it shall pay a certain definite sum of money to you. No matter how it happens, you will receive a certain amount of money.'"

In that way the law operates as a guaranty to both parties before the occasion arises for the exercise of the right at all. It is in the nature of an insurance, by which we compel the railroad company to pay a definite sum of money, and compel the employee to receive that definite sum of money, wholly independent of how the accident may occur. There you find the compensating circumstance to both—that it relieves the whole situation of uncertainty.

Mr. GRAHAM. Senator, does it not really rest more on the police power than on any constitutional provision? In its last analysis, is it not an exercise of the police power?

Senator SUTHERLAND. Undoubtedly. It is an exercise, as I think, of the police power; because I believe the Federal Government has the police power when appropriate to carry out its delegated powers. But some people do not agree with that; and for the sake of those people I will say it is a power analogous to the police power. But to all intents and purposes it is an exercise of the police power in order to regulate commerce.

Mr. FLOYD. I want to be understood. I am not objecting or urging any objection to this bill on the ground that it is unconstitutional. I stated some days ago that I believed that so far as the constitutionality of the measure was concerned, it had been guarded in such a way that it was constitutional. But I am making the point that the argument urged by Judge Brantley and Senator Sutherland that putting in an optional feature would render it unconstitutional is not well taken. I do not believe that providing two remedies and making them elective would in any way affect the constitutionality of the act, provided you leave no elective feature to the railroad company, but by virtue of your power over the railroad company you provide that they shall pay certain amounts in certain cases. When that is done I am unable to conceive how making it elective with the railroad employee to select one of two remedies would make it unconstitutional. Would a law making a criminal offense be unconstitutional because it provided for different pleas? I think not.

Mr. STERLING. Mr. Floyd, conceding, for the sake of the argument, that the law is constitutional with an elective clause in it, what have you to say about the justice of a law of that kind?

Mr. FLOYD. It depends altogether on the viewpoint. If you are looking at it from the viewpoint of the railroads, you might say it was unjust. If you are looking at it from the viewpoint of the employee, then you might say that the converse of the proposition was unjust.

Mr. STERLING. You will agree that there is not any such thing as paying full compensation for the life of a human being. You can not compensate a man for the loss of an arm. The law and the juries give men something under those circumstances by way of relief.

Mr. FLOYD. Oh, I understand that. There is no such thing as giving adequate compensation.

Mr. STERLING. When you add to the employer the burden of paying all men, regardless of the question of negligence, it seems to me there ought to be some limit put on the amount which a man can recover. It is not altogether an injustice to the railroads, but it might be an injustice to the employee, to pass a law that would give him more than he would be entitled to. That would not be fair at all to either party. It seems to me that as a simple question of justice, regardless of the constitutional question, there ought to be some limitation on all cases, if you are going to extend compensation to all cases.

Mr. FLOYD. In answer to that I want to say that this is a great question and a new question. The labor people of this country have been working for years to so amend our employers' liability law as

to give them a greater degree of justice; and finally the highest court in the land has upheld the constitutionality of the employers' liability act of 1908. This law is untried. It is an experiment in this country, so far as the Federal Government is concerned.

Then what harm could there be in making this simple concession by which you can eliminate, I think, practically all of the opposition to this legislation: Just permit the insertion in it of a provision leaving it optional with the employee to say whether he will bring suit under the existing laws or whether he will seek compensation under this act?

Mr. STERLING. I felt about it just as you do at first.

The CHAIRMAN. Mr. Sterling, will you and Mr. Floyd permit the chairman to suggest that discussion among members is a matter we might take up at a later time? Mr. Hardwick is here now, and desires to be heard in opposition to the bill.

Mr. STERLING. Permit me to say, in connection with the matter, that originally I felt just as Mr. Floyd does. I went before the commission on that very point, and expressed my views. I heard the reasons given by some members of the commission, and I confess that I have been wholly converted to the proposition that the commission is right in omitting any elective provision from the bill.

Mr. BRANTLEY. Mr. Chairman, I think Mr. Floyd confuses remedies with rights. Compensation is not a new remedy for an existing right. It creates a right where none before existed and creates it arbitrarily. I want to express to Mr. Floyd this further thought about the whole subject: Compensation proceeds on the theory that a man killed is dead, whether killed through negligence or without negligence; that the dependents of the dead man are just as much dependent whether he was killed as the result of negligence or whether he was killed in the absence of negligence. The whole theory of compensation is to wipe out the law of negligence and to properly take care of the dependents of those who are killed, and to properly take care of those who are injured. It is results that compensation seeks.

Here are two widows, each of them the widow of an engineer, each engineer having made the same wages. One engineer was killed as the result of his own negligence, and the other was killed as the result of the negligence of some one else. Is not the situation of those two widows exactly the same? Are not their needs and their wants and their necessities just the same?

The spirit, the purpose, the intent, and the thought of compensation is to take care of both of them—not in an uncertain amount that may or may not come as the result of litigation, but in a certain amount that will take care of them.

The thought that Mr. Floyd has in mind, I think, would be reached by increasing the amount of the compensation far better than by making a discrimination by which some can have large amounts, and others, equally as much in want, can not have them. We want to get away from that old principle which has been too long upon our statute books.

Mr. DODDS. Before you leave that point, under the English compensation act, where they have preserved the elective system, what is the limitation placed on the liability recovery, if any?

Senator SUTHERLAND. Under the English law, which is different from any other law in Europe, the employee is allowed an election. He may sue or he may take his compensation. He may sue under

the liability statute, or he may sue at common law. But under the common law, all of the common-law defenses are preserved in their utmost rigor; so that he does not resort to that. Under the liability statute, the amount which he may recover is the same as he may recover under the compensation statute. So while the election is given in terms, in fact it amounts to nothing.

Mr. HARDWICK. Except in cases where the common-law defenses are not good.

Senator SUTHERLAND. The reports of the English commissions show very clearly that there is practically no resort to the common law.

Mr. NORRIS. A man would not resort to the courts if he thought he could not get any more there.

Senator SUTHERLAND. As a matter of fact, he does not do it.

Mr. HARDWICK. But if the common-law defenses are not good, his right to recover there is unlimited; and there are far fewer accidents there.

Senator SUTHERLAND. But, as I say, all of the defenses are preserved in their utmost rigor at common law. There is no modification such as we have in reference to the fellow servant, the departmental rule, and the superior-servant rule—nothing of the sort. And the facts show that they do not resort to that remedy at all. They take their compensation.

Let me just add, further, what we all know—that there is no constitutional limitation in England against passing such a law as that. But the other countries of Europe, without an exception, have taken the other view of it and have confined it to the single remedy. That is true of every country of Europe, with the exception of England.

Mr. DODDS. That answers the question.

Mr. BRANTLEY. Mr. Chairman, I am not a member of the Order of Railway Conductors and I do not propose to speak authoritatively for them. But I do feel qualified to call attention to what took place before this committee on March 26 last, which was prior to the passage by the Senate of the compensation bill. One of my colleagues from my State, Mr. Howard, made the statement to the committee that he was informed that the rank and file of the men who were most affected by the operation of this revolutionary measure could not even write their Senators or their Representatives in Congress a single solitary line in opposition to this bill without violating the rules and regulations of these organizations. He said:

That rule does not apply as to the Brotherhood of Locomotive Firemen and Engineers, but it does apply to all of the other organizations.

In answer to that statement, made in the presence of the committee, Mr. A. B. Garrettson, president of the Order of Railway Conductors, made this statement to the committee:

Mr. Howard suffers the fate that many men that are not conversant with the rules governing an organization do, in the fact that he has been misinformed. I desire to say to you that for the Order of Railway Conductors there is not a line in existence that ties the hands of any member of that organization or places either his membership or his insurance in jeopardy when he openly and freely opposes any legislation to which the president of that organization has given his consent and approval. The members of this organization are absolutely free to appear here, and the only member of the Order of Railway Conductors that is present came here after I gave open and free consent for him to come.

That is the status of the Order of Railway Conductors. We do not coerce our men,

That is all I have to submit at this time, Mr. Chairman. I am certainly indebted to the members of the committee for their patience, and I thank them.

Mr. HARDWICK. Mr. Chairman, before I proceed, I will state that there are several gentlemen here who are opposed to the bill, some of whom will make short statements. They represent in some way or other the various organizations to which reference has been made in this hearing. I understood at the outset that these gentlemen would be allowed the same latitude that the friends and supporters of the bill were allowed, and that they could make any supplementary or additional statements about the matter that they cared to make, or that the other side were allowed to make. Am I right in that?

The CHAIRMAN. Speaking for myself, Mr. Hardwick, I have no doubt I voice the sentiment of the committee when I say it is not the desire of any member of the committee to suppress the views of any man either for or against the bill. As you know, the committee has given several hearings and devoted much time to the hearings. It has heard both gentlemen in advocacy of the measure and those in opposition to it. I should think a reasonable request coming from you and those who desire to be heard in opposition to the bill would be acceded to.

Mr. HARDWICK. I am also requested to state to the committee that Senator Hoke Smith, of Georgia, and possibly Senator Reed, of Missouri, if he can get over here, want to be heard in opposition to the measure before this hearing is concluded.

[After discussion:]

Mr. STERLING. Mr. Chairman, I move that the committee meet to-morrow morning at 10 o'clock and hear gentlemen in opposition to the bill until the hour of 1 o'clock; that at 1 o'clock the committee take a recess for lunch, reassembling at 2, and hear gentlemen in opposition to the bill until the hour of 5 o'clock; and that the time shall be apportioned by the chairman among the gentlemen who shall apply to be heard as the judgment of the Chair shall dictate.

The motion was carried; and the committee thereupon adjourned until to-morrow, Friday, June 7, 1912, at 10 o'clock a. m.



INDEX.

	Page.
Statement of Edward A. Bates, of Utica, N. Y., supervising factory inspector of labor, State of New York.....	176
Statement of W. W. Williams, State deputy inspector of Missouri.....	176
Statement of Samuel Gompers, president of American Federation of Labor....	179
Statement of T. J. Hoskins, of Ogden, Tenn., member of the Brotherhood of Locomotive Engineers.....	184, 196
Statement of Hon. George Sutherland, United States Senator from Utah.....	202
Statement of Arthur E. Holder, of Washington, D. C., member of the legislative committee of the American Federation of Labor.....	255
Statement of Hon. William G. Brantley, Representative from the State of Georgia.....	227

JUN 30 1912